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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–09–0082; FV10–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2010–2011 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2010–2011 marketing year, which begins on June 1, 2010. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 566,962 pounds and 28 percent, respectively, and for Class 3 (Native) spearmint oil of 980,265 pounds and 43 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: *Effective Date:* This final rule becomes effective June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Susan M. Coleman, Marketing Specialist or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724; Fax: (503) 326–7440; or E-mail: *Sue.Coleman@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2010–2011 marketing year, which begins on June 1, 2010. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to review sales and other market information for the current marketing year, and to recommend the establishment of salable quantities and allotment percentages for each class of oil for the forthcoming marketing year beginning on June 1. The salable quantity establishes the amount of each class of spearmint oil that may be sold during the marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to that producer's allotment base for the applicable class of spearmint oil. The salable quantities are intended to satisfy anticipated market needs.

Recommendations are made well in advance to allow producers the chance to adjust their spearmint plantings in relation to the salable quantities and allotment percentages in the proposed regulation. In developing a regulatory recommendation for USDA, the Committee utilizes information pertaining to current and projected supply, demand, production costs and producer prices, as well as input from spearmint oil handlers and producers regarding prospective marketing conditions.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 14, 2009, and recommended salable quantities and allotment percentages for both classes of oil for the 2010–2011 marketing year. The Committee, in a vote with six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 566,962 pounds and 28 percent, respectively. The two members opposing the action were in favor of a greater salable quantity and allotment percentage for Scotch. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 980,265 pounds and 43 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers

during the 2010–2011 marketing year, which begins on June 1, 2010. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest States of Indiana, Michigan, and Wisconsin, as well as in the States of Montana, South Dakota, North Dakota, and Minnesota.

When the order became effective in 1980, the Far West had about 72 percent of global Scotch spearmint oil sales. This was produced on about 9,702 acres within the Far West production area. In 2004, Scotch spearmint was planted on 4,772 acres in the Far West, whereas acreage in 2009 was up to 7,583 acres. About 84 percent of the Far West Scotch spearmint oil acreage is produced in Washington State.

During the last 40 years, the Far West's share of world Scotch production has varied. In 2002, for example, the Far West share of world sales reached a low of about 27 percent according to Committee records. The earlier downward trend in the Far West share of world sales was attributable to the increase in global production—specifically increases in Canada and China—and decreasing acreage in the Far West. Since that low, Far West spearmint oil sales as a percentage of total world sales is back up to over 41 percent.

This recent resurgence in overall share of the world market is due to many factors, including an increase in Far West production, a decrease in production in China coupled with an increase in Chinese utilization of its own production, and a recent decrease in acreage in other production areas within the United States. For example, production in the Midwest states has gone from 186,000 pounds in 2004, down to an estimated 35,000 pounds in 2009. This has increased the Far West's percentage of annual U.S. sales of Scotch spearmint oil to approximately 60 percent from the 2002 low of about 43 percent.

Other factors that have played a significant role in the Far West share of the global Scotch spearmint oil market include the overall quality of imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the Committee with challenges in accurately predicting trade demand for Scotch spearmint oil. Despite these challenges, the marketing order has continued to contribute to price and market stabilization for Far West producers.

When the Committee met in October 2008 to recommend the 2009–2010 volume regulation, demand for spearmint oil appeared high in relation to expected production. The Committee consequently recommended a relatively high 2009–2010 Scotch salable quantity and allotment percentage in an effort to match supply with anticipated demand. When the Committee recommended the 2009–2010 Scotch salable quantity and allotment percentage of 842,171 pounds and 42 percent, respectively, it also estimated that the quantity of salable Scotch spearmint oil carried over from the 2008–2009 marketing year into the 2009–2010 marketing year would approximate 124,735 pounds. The actual amount carried forward on June 1, 2009, however, was 207,976 pounds, an amount higher than the Committee considers desirable. Major factors contributing to the large quantity of Scotch spearmint oil being carried into the 2009–2010 marketing year included fewer 2008–2009 sales than anticipated and production levels higher than expected.

The large carry-in, coupled with the overall lackluster economy and current lack of demand for spearmint oil has led to an over-supply situation within the Far West spearmint oil industry, particularly with Scotch spearmint oil. In October 2008, spearmint oil handlers had projected that the 2009–2010 trade demand for Far West Scotch spearmint oil would range from a low of 800,000 pounds to a high of 1,000,000 pounds. In October 2009, the same handlers reassessed their earlier projection for this period with a less optimistic range of 700,000 pounds to 750,000 pounds of Scotch spearmint oil trade demand. Although consumer demand for mint flavored products is reportedly steady—thus providing sustained optimism for the long term demand for Far West spearmint oil—these handlers reported that the manufacturers of such products were reducing purchases and meeting demand by trimming their own inventories to reduce the recessionary impact on their businesses.

The Committee recommended the 2010–2011 Scotch spearmint oil salable quantity of 566,962 pounds and allotment percentage of 28 percent utilizing sales estimates for 2010–2011 Scotch spearmint oil as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil sales levels. The Committee is estimating that about 800,000 pounds of Scotch spearmint oil may be sold during the 2010–2011 marketing year. When considered in conjunction with the estimated carry-in of 349,998 pounds of oil on June 1, 2010, the recommended salable quantity of 566,962 pounds results in a total available supply of about 916,960 pounds of Scotch spearmint oil during the 2010–2011 marketing year.

The Committee's stated intent is to keep adequate supplies available to meet market needs and improve producer prices.

The Committee developed its recommendation for the Scotch spearmint oil salable quantity and allotment percentage for the 2010–2011 marketing year on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2010—349,998 pounds.* This figure is the difference between the revised 2009–2010 marketing year total available supply of 1,049,998 pounds and the estimated 2009–2010 marketing year trade demand of 700,000 pounds.

(B) *Estimated trade demand for the 2010–2011 marketing year—800,000 pounds.* This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2009, as well as estimates provided by handlers and other meeting participants at the October 14, 2009, meeting. The average estimated trade demand provided at the six production area meetings is 800,000 pounds, which is the same level as estimated by handlers. The average of sales over the last five years is 841,436 pounds.

(C) *Salable quantity required from the 2010–2011 marketing year production—450,002 pounds.* This figure is the difference between the estimated 2010–2011 marketing year trade demand (800,000 pounds) and the estimated carry-in on June 1, 2010 (349,998 pounds).

(D) *Total estimated allotment base for the 2010–2011 marketing year—2,024,863 pounds.* This figure represents a one percent increase over the revised 2009–2010 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—22.2 percent.* This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) *Recommended allotment percentage—28 percent.* The Committee's recommendation is based

on the computed allotment percentage (22.2 percent), the average of the computed allotment percentage figures from the six production area meetings (23.7 percent), and input from producers and handlers at the October 14, 2009, meeting. The actual recommendation of 28 percent is based on the Committee's determination that the computed percentage (22.2 percent) may not adequately supply the potential 2010–2011 Scotch spearmint oil market.

(G) *The Committee's recommended salable quantity—566,962 pounds.* This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) *Estimated available supply for the 2010–2011 marketing year—916,960 pounds.* This figure is the sum of the 2010–2011 recommended salable quantity (566,962 pounds) and the estimated carry-in on June 1, 2010 (349,998 pounds).

Class 3 (Native) Spearmint Oil

The Native spearmint oil industry is facing market conditions similar to those affecting the Scotch spearmint oil market, although not as severe. Over 90 percent of U.S. production of Native spearmint is produced within the Far West production area, thus domestic production outside this area is not a major factor in the marketing of Far West Native spearmint oil. This has been an attribute of U.S. production since the order's inception. Minor domestic production of Native spearmint oil outside of the Far West is in Indiana, Michigan, Wisconsin, Montana, South Dakota, North Dakota, and Minnesota.

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India produces an increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of global sales of Native or Native quality spearmint oil. By 2009, that share had shrunk to less than 60 percent.

As with Scotch spearmint, acreage planted to Native spearmint has fluctuated with demand and producer price. In 2004, Committee records indicate that there were 4,805 acres of Native spearmint planted as opposed to the 8,919 acres planted in 2009.

When the Committee met in October 2008 to recommend the 2009–2010 volume regulation, the same relatively good market conditions buoying the industry since 2004 were in effect (although the Committee initially recommended Native spearmint oil allotment percentages averaging less than 43 percent between 2004 and 2008, demand proved better than anticipated and multiple intra-seasonal increases were effectuated each year to bring the final percentages up to a four-year average of nearly 56 percent). As a consequence, the Committee recommended a 2009–2010 marketing year allotment percentage of 53 percent for Native spearmint oil to match supply with anticipated demand.

At the same time, the Committee also estimated that the quantity of salable Native spearmint oil that would be carried over from the 2008–2009 marketing year into the 2009–2010 marketing year would approximate 51,363 pounds. The actual amount carried forward on June 1, 2009, however, was 130,323 pounds. Factors contributing to the larger 2009–2010 marketing year carry-in included fewer 2008–2009 sales than anticipated and production levels higher than expected.

Although to a lesser extent than with Scotch spearmint oil, the large Native spearmint oil carry-in, coupled with the recessionary economy and subsequent lack of demand for spearmint oil, has led to a moderately oversupplied Native spearmint oil market. In October 2008, the 2009–2010 trade demand for Far West Native spearmint oil was projected to average about 1,275,000 pounds. In October 2009, these same handlers revised the estimate for the 2009–2010 marketing year for a projected average trade demand of about 1,143,333 pounds for Native spearmint oil.

The Committee's recommendation for the 2010–2011 Native spearmint oil salable quantity of 980,265 pounds and allotment percentage of 43 percent utilized sales estimates provided by several of the industry's handlers, as well as historical and current Native spearmint oil sales levels. With figures about the same as those of the 2009–2010 marketing year, the Committee is estimating that 2010–2011 Native spearmint oil marketing year trade demand will be about 1,140,000 pounds. When considered in conjunction with the estimated carry-in of 186,595 pounds of oil on June 1, 2010, the recommended salable quantity of 980,265 pounds results in a total 2010–2011 available supply of Native spearmint oil of about 1,166,860 pounds.

Similar to the methods used with Scotch spearmint oil, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage primarily relies on the relationship between estimated trade demand and available supply. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee based its recommendation for the Native spearmint oil salable quantity and allotment percentage for the 2010–2011 marketing year on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2010—186,595 pounds.* This figure is the difference between the revised 2009–2010 marketing year total available supply of 1,326,595 pounds and the estimated 2009–2010 marketing year trade demand of 1,140,000 pounds.

(B) *Estimated trade demand for the 2010–2011 marketing year—1,140,000 pounds.* This figure is based on input from producers at the six Native spearmint oil production area meetings held in late September and early October 2009, as well as estimates provided by handlers and other meeting participants at the October 14, 2009, meeting. The average estimated trade demand provided at the six production area meetings was 1,140,000 pounds, whereas the handler estimate ranged from 1,150,000 pounds to 1,200,000 pounds.

(C) *Salable quantity required from the 2010–2011 marketing year production—953,405 pounds.* This figure is the difference between the estimated 2010–2011 marketing year trade demand (1,140,000 pounds) and the estimated carry-in on June 1, 2010 (186,595 pounds).

(D) *Total estimated allotment base for the 2010–2011 marketing year—2,279,687 pounds.* This figure represents a one percent increase over the revised 2009–2010 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—41.8 percent.* This percentage is computed by dividing the required salable quantity (953,405 pounds) by the total estimated allotment base (2,279,687 pounds).

(F) *Recommended allotment percentage—43 percent.* This is the Committee's recommendation based on the computed allotment percentage (41.8 percent), the average of the computed allotment percentage figures from the six production area meetings (45 percent), and input from producers and handlers at the October 14, 2009, meeting.

(G) *The Committee's recommended salable quantity—980,265 pounds.* This

figure is the product of the recommended allotment percentage (43 percent) and the total estimated allotment base (2,279,687 pounds).

(H) *Estimated available supply for the 2010–2011 marketing year—1,166,860 pounds.* This figure is the sum of the 2010–2011 recommended salable quantity (980,265 pounds) and the estimated carry-in on June 1, 2010 (186,595 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 566,962 pounds and 28 percent, and 980,265 pounds and 43 percent, respectively, are based on the goal of maintaining market stability. The Committee anticipates that this goal would be achieved by matching supply to estimated demand and thus avoiding extreme fluctuations in spearmint oil supplies and prices. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil—developing during the marketing year—can be satisfied by an intra-seasonal increase in the salable quantities. Producers who produce more than their annual allotments during the 2010–2011 marketing year may transfer such excess spearmint oil to producers with production less than their annual allotment, or, up until November 1, 2010, place it into the reserve pool.

This regulation is similar to regulations issued in prior seasons. The average allotment percentage for the most recent five marketing years for Scotch spearmint oil is 47 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 53 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2010–2011 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order. During its discussion of potential 2010–2011 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2010–2011 season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 38 producers of Scotch spearmint oil and approximately 84 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 38 Scotch spearmint oil producers and 29 of the 84 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2010–2011 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by matching supply to estimated demand thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; "CV") of Far West spearmint oil production from 1980 through 2008 was about 0.23. The CV for spearmint oil grower prices was about 0.14, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 49 percent of the 29-year average (1.87 million pounds from 1980 through 2008) and the largest crop was approximately 165 percent of the 29-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of this needs to take place by November 1.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks grown in large production years are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the trade demand for the 2010–2011 marketing year for both classes of oil at 1,940,000 pounds, and that the expected combined carry-in will be 536,593 pounds. This results in a combined required salable quantity of 1,403,407 pounds. With volume control, sales by producers for the 2010–2011 marketing year would be limited to 1,547,227 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2010–2011 producer allotments are based, are 28 percent for Scotch and 43 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.51 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The

surplus situation for the spearmint oil market that would exist without volume controls in 2010–2011 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control.

After computing the initial 22.2 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Considered levels ranged from 28 percent to 32 percent. There was consensus that the allotment percentage for 2010–2011 should be less than the percentage established for the 2009–2010 marketing year (42 percent). After considerable discussion, however, the Committee determined that 566,962 pounds and 28 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2010–2011 marketing year.

The Committee was able to reach a consensus regarding the level of volume control for Native spearmint oil. After first computing the allotment percentage at 41.8 percent, the Committee unanimously determined that 980,265 pounds and 43 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2010–2011 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2010–2011 would decline substantially below current levels.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0178, Vegetable and Specialty Crops. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 14, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 22, 2010 (75 FR 13445). Copies of the rule were provided to Committee staff, which in turn made it available to all spearmint oil producers, handlers, and interested persons. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending April 6, 2010, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2010–2011 marketing year starts on June 1, 2010, and handlers will need to begin purchasing the spearmint oil allotted under this rulemaking. Further, handlers are aware of this rule, which was recommended at a public meeting. Finally, a 60-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.229 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.229 Salable quantities and allotment percentages—2010–2011 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2010, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 566,962 pounds and an allotment percentage of 28 percent.

(b) Class 3 (Native) oil—a salable quantity of 980,265 pounds and an allotment percentage of 43 percent.

Dated: May 12, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–11862 Filed 5–17–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0538; Airspace Docket No. 09–ASW–15]

Amendment of Class E Airspace; Claremore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Claremore, OK, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Claremore Regional Airport, Claremore, OK. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On February 5, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Claremore, OK, reconfiguring controlled airspace at Claremore Regional Airport (75 FR 5905) Docket No. FAA–2009–0538. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace for the Claremore, OK area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Claremore Regional Airport. Adjustment to the geographic coordinates will be made in accordance with the FAA's National Aeronautical Charting Office. With the exception of this change, this action is the same as that published in the NPRM. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Claremore Regional Airport, Claremore, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW OK E5 Claremore, OK [Amended]

Claremore Regional Airport, OK
(Lat. 36°17′34″ N., long. 95°28′47″ W.)
Claremore Regional Hospital Heliport, OK
Point In Space Coordinates
(Lat. 36°18′23″ N., long. 95°38′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Claremore Regional Airport and that airspace within a 6-mile radius of the Point In Space serving Claremore Regional Hospital Heliport.

Issued in Fort Worth, Texas, on May 7, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–11714 Filed 5–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1154; Airspace Docket No. 09–AGL–35]

Amendment of Class E Airspace; Marion, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for the Marion, IL area, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Southern Illinois Airport, Carbondale/Murphysboro, IL. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On February 10, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Marion, IL, reconfiguring controlled airspace at Southern Illinois Airport (75 FR 6593) Docket No. FAA–2009–1154. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace for the Marion, IL area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Southern Illinois Airport, Carbondale/Murphysboro, IL. The addition of the RNAV (GPS) RWY 36R SIAP at Southern Illinois Airport has created the need to extend existing Class E airspace to the south. Adjustment to the geographic coordinates for Williamson County Regional Airport, Marion, IL, also will be made in accordance with the FAAs National Aeronautical Charting Office. This action is necessary for the safety and management of IFR operations within the National Airspace System. With the exception of editorial changes, and the changed described above, this rule is the same as that proposed in the NPRM.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace in the Marion, IL area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL IL E5 Marion, IL [Amended]

Carbondale/Murphysboro, Southern Illinois Airport, IL
(Lat. 37°46′41″ N., long. 89°15′07″ W.)
Marion, Williamson County Regional Airport, IL
(Lat. 37°45′18″ N., long. 89°00′40″ W.)
That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 37°53′40″ N., long. 88°48′35″ W.; to lat. 37°56′25″ N., long. 89°02′40″ W.; to lat. 37°58′45″ N., long. 89°20′25″ W.; to lat. 37°47′25″ N., long. 89°26′00″ W.; to lat. 37°42′10″ N., long. 89°24′00″ W.; to lat. 37°40′46″ N., long. 89°20′17″ W.; to lat. 37°34′56″ N., long. 89°20′25″ W.; to lat. 37°34′48″ N., long. 89°10′21″ W.; to lat. 37°37′05″ N., long. 89°10′18″ W.; to lat. 37°32′50″ N., long. 88°59′00″ W.; to lat. 37°42′35″ N., long. 88°52′15″ W.; to the point of beginning.

Issued in Fort Worth, Texas on May 5, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–11735 Filed 5–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1058]

RIN 1625–AA11

Regulated Navigation Area; U.S. Navy Submarines, Hood Canal, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) covering a portion of the Hood Canal in the State of Washington that will be in effect whenever any U.S. Navy submarine is operating in that area and is being escorted by the Coast Guard. The RNA is necessary to help ensure the safety and security of the submarines, their Coast Guard security escorts, and the maritime public in general. The RNA will do so by requiring all persons and vessels located within the RNA to follow all lawful orders and/or directions given to them

by Coast Guard security escort personnel.

DATES: This rule is effective May 18, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–1058 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1058 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Matthew N. Jones, Staff Attorney, Thirteenth Coast Guard District; telephone 206–220–7155, e-mail *Matthew.N.Jones@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 13, 2010, we published an interim rule entitled "Regulated Navigation Area; U.S. Navy Submarines, Hood Canal, WA" in the **Federal Register** (75 FR 1706). We received one comment on the proposed rule that was actually meant for a related interim rule published on the same date at (75 FR 1709). That comment is addressed in the final rule with docket number USCG–2009–1057. No one requested a public meeting and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because waiting 30 days would be contrary to the public interest since U.S. Navy submarine operations in the Hood Canal are ongoing, making the RNA created by this rule immediately necessary to help ensure the safety and security of the submarines, their Coast Guard security escorts, and the maritime public in general.

Background and Purpose

U.S. Navy submarines frequently operate in the Hood Canal. Due to the numerous safety and security concerns involved with submarine operations near shore in very restricted waters, the Coast Guard provides security escorts of submarines when operating in that area. Security escorts of this type require the Coast Guard personnel on-scene to make quick judgments about the intent of vessels operating in close proximity to the submarines and decide, occasionally with little information about the vessels or persons on board, whether or not they pose a threat to the submarine. The narrow confines of the Hood Canal make this a particularly difficult task as it forces the submarines and their Coast Guard security escorts to frequently come into close quarters contact with the maritime public.

The RNA established by this rule will allow Coast Guard security escort personnel to order and/or direct persons and vessels operating within the RNA to stop, move, change orientation, etc. The ability to do so will help avoid unnecessary and potentially dangerous close quarters contact between Coast Guard security escorts and the maritime public within the Hood Canal. In addition, it will give Coast Guard security escorts an additional tool for determining the intent of vessels that, for whatever reason, are operating too close to an escorted submarine. Both of these effects will help ensure the safety and security of the submarines, their Coast Guard security escorts, and the maritime public in general.

Discussion of Comments and Changes

This rule establishes an RNA covering a portion of the Hood Canal in the State of Washington that will be in effect whenever any U.S. Navy submarine is operating in that area and is being escorted by the Coast Guard. All persons and vessels located within the RNA are required to follow all lawful orders and/or directions given to them by Coast Guard security escort personnel.

No comments were received about this rule. One change to the rule was made to clarify the area covered by the RNA. Specifically, the RNA will cover all waters of Hood Canal, including Dabob Bay, located between two lines with the first line connecting positions 47°37.9′ N, 122°57.1′ W and 47°37.9′ N, 122°52.9′ W and the second line connecting positions 48°00.7′ N, 122°41.0′ W and 47°56.4′ N, 122°36.9′ W.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard has made this determination based on the fact that (1) the RNA is only in effect for the short periods of time when submarines are operating in Hood Canal and being escorted by the Coast Guard and (2) vessels may freely operate within the RNA to the extent permitted by other law or regulation unless given a lawful order and/or direction by Coast Guard security escort personnel.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the RNA when it is in effect. The RNA will not, however, make significant economic impact on a substantial number of small entities because (1) the RNA is only in effect for the short periods of time when submarines are operating in Hood Canal and being escorted by the Coast Guard and (2) vessels may freely operate within the RNA to the extent permitted by other law or regulation unless given a lawful order and/or direction by Coast Guard security escort personnel.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.1328 to read as follows:

§ 165.1328 Regulated Navigation Area; U.S. Navy Submarines, Hood Canal, WA

(a) *Location.* The following area is a regulated navigation area (RNA): All waters of the Hood Canal in the State of Washington whenever any U.S. Navy submarine is operating in the Hood Canal and is being escorted by the Coast Guard. For purposes of this section, "Hood Canal" means all waters of Hood Canal, including Dabob Bay, located between two lines with the first line connecting positions 47°37.9′ N, 122°57.1′ W and 47°37.9′ N, 122°52.9′ W and the second line connecting positions 48°00.7′ N, 122°41.0′ W and 47°56.4′ N, 122°36.9′ W

(b) *Regulations.* All persons and vessels located within the RNA created by paragraph (a) of this section shall follow all lawful orders and/or directions given to them by Coast Guard security escort personnel. 33 CFR Section 165, Subpart B, contains additional provisions applicable to the RNA created in paragraph (a) of this section.

(c) *Notification.* The Coast Guard security escort will attempt, when necessary and practicable, to notify any persons or vessels in the RNA created in paragraph (a) of this section of its existence via VHF Channel 16 and/or any other means reasonably available.

Dated: April 25, 2010.

G.T. Blore,

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

[FR Doc. 2010–11262 Filed 5–17–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0333]

RIN 1625–AA00

Safety Zone; Marathon Oil Refinery Construction, Rouge River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Rouge River, Detroit, Michigan. This zone is intended to restrict vessels from a portion of the Rouge River during the Marathon Oil Refinery Construction project. This temporary safety zone is necessary to protect mariners and construction personnel from the hazards associated with moving large pieces of equipment in a high traffic maritime environment.

DATES: *Effective Date:* This rule is effective in the CFR from May 18, 2010 until 7 p.m. on November 30, 2010. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. on May 1, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0333 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0333 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, e-mail *Joseph.H.Snowden@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying this rule would be contrary to the public interest of ensuring the safety of vessels during the construction, and immediate action is necessary to prevent possible loss of life and property. The Coast Guard has not received any complaints or negative comments previously with regard to events of this type and duration.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of vessels during the construction, and immediate action is necessary to prevent possible loss of life and property.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels from hazards associated with construction projects. Based on accidents that have occurred in other Captain of the Port zones and the dangerous nature of large construction projects, the Captain of the Port Detroit has determined construction projects in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large vessels, congested waterways, and movement of large pieces of equipment could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the construction project will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of mariners and construction personnel during the setup and offloading of equipment in conjunction with the Marathon Oil Refinery Construction project. The offloading of equipment will occur between 7 a.m. on May 1, 2010, and 7 p.m. on November 30, 2010. Specifically, offloading operations will occur between 7 a.m. and 7 p.m. daily on multiple dates, to be determined, during the effective period of this regulation. The public will be notified of the specific enforcement dates as soon as practicable through the publication of a Notice of Enforcement and by Broadcast Notice to Mariners.

The temporary safety zone will encompass all waters of the Rouge River, Detroit, MI, from the Dix Ave. bridge to the north end of Fordson Island, bound by a line starting from a point on land on the south shore of the Rouge River at position 42°17.8′ N; 083°9.1′ W, continuing southeast to a point on land at position 42°17.7′ N; 083°9.0′ W, across to the north side of the river to a point on land at position 42°17.8′ N; 083°8.9′ W, along the shore northwest to a point on land at position 42°17.8′ N; 083°9.0′ W, continuing back southwest to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

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

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this regulation will restrict access to the area, the effect of the rule will not be significant because: The minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Rouge River near Detroit, MI between 7 a.m. on May 1, 2010 and 7 p.m. on November 30, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for 12 hours on each of the days during the effective dates of this temporary final rule. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0333 to read as follows:

§ 165.T09–0333 Safety zone; Marathon Oil Refinery Construction, Rouge River, Detroit, MI

(a) *Location.* The following area is a temporary safety zone: all U.S. waters of the Rouge River, Detroit, MI, bound by a line starting from a point on land on the south shore of the Rouge River at position 42°17.8′ N; 083° 9.1′ W, continuing southeast to a point on land at position 42°17.7′ N; 083° 9.0′ W, across to the north side of the river to a point on land at position 42°17.8′ N; 083°8.9′ W, along the shore northwest to a point on land at position 42°17.8′ N; 083°9.0′ W, continuing back southwest to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83). This safety zone effectively covers all of the Rouge River from the Dix Ave. bridge to the north end of Fordson Island.

(b) *Effective Period.* This regulation is effective from 7 a.m. on May 1, 2010 to 7 p.m. on November 30, 2010. This rule will be enforced from 7 a.m. to 7 p.m. daily, on multiple dates to be determined during the effective period. The public will be notified of the specific enforcement dates as soon as practicable through the publication of a Notice of Enforcement and by Broadcast Notice to Mariners.

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

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

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

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: April 30, 2010.

E.J. Marohn,

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

[FR Doc. 2010–11781 Filed 5–17–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0064; FRL–9150–5]

RIN 2060–AP80

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delay of effective date.

SUMMARY: EPA is delaying the effective date of the final rule titled "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation" under the authority of the Administrative Procedure Act (APA) section 705 until the proceeding for judicial review of this rule is completed or EPA completes the reconsideration of the rule. This final rule for "aggregation," which EPA published in the **Federal Register** on January 15, 2009, is subject to a petition for review and has not become effective.

DATES: The effective date of FR Doc. E9–815, published in the **Federal Register** on January 15, 2009 (74 FR 2376), and delayed on February 13, 2009 (74 FR 7284) and May 14, 2009 (74 FR 22693), which was May 18, 2010, is further delayed until such time as the proceeding for judicial review of this document is completed. The EPA will publish a document in the **Federal Register** announcing the effective date once the delay is no longer necessary.

ADDRESSES: *Docket:* The final rule, the petition for reconsideration, and all other documents in the record for the rulemaking are in Docket ID. No. EPA–HQ–OAR–2003–0064. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Svendsgaard, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–2380, fax number (919) 541–5509, e-mail address: *svendsgaard.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 15, 2009, the EPA ("we") issued a final rule amending the PSD and nonattainment NSR regulations that implement the definition of "modification" in Clean Air Act section 111(a)(4). The amendments addressed when a source must combine ("aggregate") nominally-separate physical changes and changes in the method of operation for the purpose of determining whether they are a single change under NSR and result in a significant emissions increase. The amendments retained the existing rule language for aggregation but interpreted that rule text to mean that sources and permitting authorities should combine emissions when activities are "substantially related." It also adopted a rebuttable presumption that activities at a plant can be presumed not to be substantially related if they occur 3 or more years apart. Collectively, this rulemaking is known as the "NSR Aggregation Amendments." For further information on the NSR Aggregation Amendments, *see* 74 FR 2376 (January 15, 2009).

The NSR Aggregation Amendments have had their effectiveness delayed by two actions published in the **Federal Register.** *See* 74 FR 7284 (February 13, 2009) and 74 FR 22693 (May 14, 2009).

The latter action established an effective date of May 18, 2010. On the same day as the first action delaying the effectiveness of the NSR Aggregation Amendments, the EPA convened a proceeding for reconsideration in response to a petition from the Natural Resources Defense Council (NRDC).[1] *See* 74 FR 7193 (February 13, 2009). In addition to filing a petition for reconsideration with EPA, NRDC also filed a petition for review of the NSR Aggregation Amendments in Federal Court.[2]

On April 15, 2010, we published in the **Federal Register** a notice soliciting comments on the NRDC petition for reconsideration (75 FR 19567). In that notice, we solicited comment on revoking the NSR Aggregation Amendments and reverting to our policies on aggregation as they existed prior to the Amendments. We requested comment on whether the NSR Aggregation Amendments are inconsistent with the statute and key legal precedent, do not properly resolve the relevant policy issues, raise implementation concerns, and otherwise do not sufficiently clarify our aggregation policy to justify abandoning our prior policy. Additionally, we proposed to further delay the effective date for the NSR Aggregation Amendments beyond May 18, 2010.

Under section 705 of the APA, "an agency * * * may postpone the effective date of [an] action taken by it pending judicial review." The provision requires that the agency find that justice requires postponing the action, that the action not have gone into effect, and that litigation be pending. As described above, the latter two requirements plainly are met. We find that justice requires postponing the effectiveness of the NSR Aggregation Amendments because allowing the rule to become effective when the Agency has expressed serious concerns about its viability and policy soundness would lead to confusion in the regulated community and the public as well as create difficulties for implementing agencies administering the program.

We also note that the comment period for the April 15, 2010 notice ends on May 17, 2010. We would not be able to review and respond to comments on that notice before the NSR Aggregation Amendments would become effective on May 18, 2010. The failure to complete the reconsideration or the proposed delay in the effective date would result in the confusion and difficulties noted above. Therefore, we find that justice requires postponing the effectiveness of the NSR Aggregation Amendments in order to allow for proper evaluation of the comments on the April 15, 2010 notice.

II. Issuance of a Stay and Delay of Effective Date

Pursuant to section 705 of the APA, the EPA hereby postpones the effectiveness of the NSR Aggregation Amendments until resolution of the proceeding for judicial review of this rule or the completion of the reconsideration process. By this action, we are delaying the effective date of FR Doc. E9–815, published in the **Federal Register** on January 15, 2009 (74 FR 2376). This delay of effectiveness will remain in place until judicial review is no longer pending or EPA completes the reconsideration process.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Aggregation, Air pollution control, Baseline emissions, Intergovernmental relations, Major modifications, Reporting and recordkeeping requirements.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Aggregation, Air pollution control, Baseline emissions, Intergovernmental relations, Major modifications, Reporting and recordkeeping requirements.

Dated: May 6, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–11299 Filed 5–17–10; 8:45 am]

BILLING CODE 6560–50–P

[1] John Walke, Natural Resources Defense Council, EPA–HQ–OAR–2003–0064–0116.1.

[2] *NRDC* v. *EPA,* No. 09–1103 (DC Cir.).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0148; FRL–9151–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Discrete Emission Credit Banking and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading, referred to elsewhere in this notice as the Discrete Emission Reduction Credit (DERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to prohibit the generation and use of DERCs from shutdown activities and further clarify procedures for using emission protocols. The August 16, 2007, submittal amends two sections of the DERC program to update cross-references to recently recodified 30 TAC Chapter 117 provisions. Additionally, EPA finds that the Texas Commission on Environmental Quality (TCEQ) has satisfied all elements of our September 6, 2006, final conditional approval of the DERC program with the submittal of the October 24, 2006, SIP submittal; and as such, the DERC program conditional approval is converted to a full approval. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

DATES: This final rule will be effective June 17, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2010–0148. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the

appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's final rule, please contact Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us", or "our" is used, we mean the EPA.

Table of Contents

I. What final action is EPA taking?
II. What is the background for this action?
III. What are EPA's responses to comments received on the proposed action?
IV. Statutory and Executive Order Reviews

I. What final action is EPA taking?

We are fully approving severable portions of two revisions to the Texas SIP submitted by the TCEQ on October 24, 2006, and August 16, 2007, specific to the DERC Program. The revisions we are approving amend existing sections and create a new section in the DERC Program at Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to prohibit the generation and use of discrete emission reduction credits from shutdown activities and further clarify procedures for using emission protocols. Additionally, EPA finds that the TCEQ has satisfied all elements of our September 6, 2006, final conditional approval of the DERC program with the submittal of the October 24, 2006, SIP submittal; and as such, the DERC program conditional approval is converted to full SIP approval. The severable portions of the August 16, 2007, submittal that we are approving non-substantively revise the DERC Program to correctly update the cross-references to the stationary source nitrogen oxide (NO_X) rules found in the Texas SIP at 30 TAC Chapter 117 as a result of the non-substantive recodification of Chapter 117 approved by EPA as part of the Texas SIP on December 3, 2008 (*see* 73 FR 73562). Additionally, in both the October 24, 2006, and August 16, 2007, SIP submittals TCEQ has made several non-substantive revisions to update grammar and document style. Consequently, we are approving the revisions to the Texas SIP at 30 TAC sections 101.372(a), 101.372(d), 101.372(f), 101.372(j), 101.373(a), 101.376(c)(4), and 101.378(b) and the creation of new section 101.375 submitted on October 24, 2006. Additionally, we are approving revisions to the Texas SIP at 30 TAC sections 101.372(d) and 101.376(d) submitted on August 16, 2007, by the TCEQ.

EPA proposed the above action on March 30, 2010, at 75 FR 15648–15655. Today, we are approving the DERC program revisions as proposed and find that they comply with the CAA and EPA regulations, are consistent with EPA policies, and will improve air quality. This final approval is being taken under parts C and D of the CAA.

In a separate rulemaking, EPA is approving the severable Emission Credit Banking and Trading Program (referred to elsewhere in this notice as the Emission Reduction Credit (ERC) Program) revisions at 30 TAC sections 101.302, 101.305, and 101.306 submitted on October 24, 2006, and 30 TAC sections 101.302 and 101.306 submitted on August 16, 2007 (see EPA–R06–OAR–2010–0417).

At this time, EPA is not taking action on the revisions to the Emissions Banking and Trading of Allowances Program at 30 TAC sections 101.338 and 101.339 submitted on October 24, 2006. EPA is also not taking action at this time on the revisions to the general air quality definitions at 30 TAC Section 101.1 or the revisions to the System Cap Trading Program at 30 TAC sections 101.383, and 101.385 submitted on August 16, 2007. These severable revisions remain under review by EPA and will be addressed in separate actions.

II. What is the background for this action?

The DERC Program, conditionally approved by EPA on September 6, 2006, establishes an open market trading program to provide flexibility for sources in complying with certain State and Federal requirements. In an open market trading program, a source generates emission credits by reducing its emissions during a discrete period of time. These credits, called discrete emission credits, or DECs, in the Texas program, are quantified in units of mass. Discrete emission credit (DEC) is a generic term that encompasses reductions from stationary sources (discrete emission reduction credits, or DERCs) and reductions from mobile sources (mobile discrete emission reduction credits, or MDERCs).[1] Generally, discrete emission reductions of criteria pollutants (excluding lead) or precursors of criteria pollutants may be banked and used as DERCs. EPA's September 6, 2006, final conditional approval of the DERC program addressed the original submission of the program on December 23, 1997, and the subsequent revisions on January 18, 2001; April 14, 2002; January 17, 2003; and December 6, 2004.

Since our September 6, 2006, final conditional approval, TCEQ has revised the DERC program to address the commitments of the DERC conditional approval. Additionally, the TCEQ adopted revisions to the DERC program consistent with the requirements of Senate Bill 784, adopted during regular session, 2005, of the 79th Texas Legislature. Senate Bill 784 allows for greater flexibility in the generation and use of international emission reductions. These revisions were adopted by the TCEQ on October 4, 2006, and became effective on October 26, 2006. The adopted regulations were submitted to EPA as a SIP revision on October 24, 2006. TCEQ has also promulgated revisions to the DERC program that update the cross-references to the new numbering structure in 30 TAC Chapter 117. These revisions were adopted on July 25, 2007, and became effective on August 16, 2007. The adopted regulations were submitted to EPA as a SIP revision on August 16, 2007.

III. What are EPA's responses to comments received on the proposed action?

EPA received no comments on our proposed rulemaking.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

[1] In this action, when we refer to the program as the "DERC Rule" or the "DERC Program" we are speaking of the entire Discrete Emission Credit Banking and Trading Program, which encompasses both DERCs and MDERCs.

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 30, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" under Chapter 101 is amended by:

■ a. Revising the entries for Sections 101.372, 101.373, 101.376, and 101.378 under Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading.

■ b. Adding an entry for Section 101.375 under Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading, in numerical order.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Chapter 101—General Air Quality Rules				
*	*	*	*	*	*	*
Subchapter H—Emissions Banking and Trading				
*	*	*	*	*	*	*
Division 4—Discrete Emission Credit Banking and Trading				

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* *	*	*	* *	*
Section 101.372	General Provisions	7/25/2007	5/18/2010 [Insert FR page number where document begins].	
Section 101.373	Discrete Emission Reduction Credit Generation and Certification.	10/4/2006	5/18/2010 [Insert FR page number where document begins].	
* *	*	*	* *	*
Section 101.375	Emission Reductions Achieved Outside the United States.	10/4/2006	5/18/2010 [Insert FR page number where document begins].	
Section 101.376	Discrete Emission Credit Use	7/25/2007	5/18/2010 [Insert FR page number where document begins].	
Section 101.378	Discrete Emission Credit Banking and Trading.	10/4/2006	5/18/2010 [Insert FR page number where document begins].	
* *	*	*	* *	*

[FR Doc. 2010–11681 Filed 5–17–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0147; FRL–9151–5]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Emission Credit Banking and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading, referred to elsewhere in this notice as the Emission Reduction Credit (ERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to further clarify procedures for using emission protocols and to update the approved list of emission credit uses. The August 16, 2007, submittal amends two sections of the ERC program to update cross-references to recently recodified 30 TAC Chapter 117 provisions. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

DATES: This final rule will be effective June 17, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2010–0147. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's final rule, please contact Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us", or "our" is used, we mean the EPA.

Table of Contents

I. What final action is EPA taking?
II. What is the background for this action?
III. What are EPA's responses to comments received on the proposed action?
IV. Statutory and Executive Order Reviews

I. What final action is EPA taking?

We are fully approving severable portions of two revisions to the Texas SIP submitted by the Texas Commission on Environmental Quality (TCEQ) on

October 24, 2006, and August 16, 2007, specific to the ERC Program. The revisions we are approving amend existing sections and create a new section in the ERC Program at Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to further clarify procedures for using emission protocols and to update the approved list of emission credit uses. The severable portions of the August 16, 2007 submittal that we are approving non-substantively revise the ERC Program to correctly update the cross-references to the stationary source nitrogen oxide (NO_X) rules found in the Texas SIP at 30 TAC Chapter 117 as a result of the non-substantive recodification of Chapter 117 approved by EPA as part of the Texas SIP on December 3, 2008 (see 73 FR 73562). Consequently, we are approving the revisions to the Texas SIP at 30 TAC sections 101.302(a), 101.302(d)(1)(C)(vi), 101.302(f), and 101.306(a)(5) and the creation of new section 101.305 submitted on October 24, 2006. Additionally, we are approving revisions to the Texas SIP at 30 TAC sections 101.302(d)(1)(A) and 101.306(b)(3) submitted on August 16, 2007, by the TCEQ.

EPA proposed the above action on March 30, 2010, at 75 FR 15645–15648. Today, we are approving the ERC program revisions as proposed and find that they comply with the CAA and EPA regulations, are consistent with EPA policies, and will improve air quality. This final approval is being taken under parts C and D of the CAA.

In a separate rulemaking, EPA is approving the severable Discrete Emission Credit Banking and Trading Program (referred to elsewhere in this notice as the Discrete Emission Reduction Credit (DERC) Program) revisions at 30 TAC sections 101.372, 101.373, 101.375, 101.376, and 101.378 submitted on October 24, 2006, and 30 TAC sections 101.372 and 101.376 submitted on August 16, 2007 (see EPA–R06–OAR–2010–0418).

At this time, EPA is not taking action on the revisions to the Emissions Banking and Trading of Allowances Program at 30 TAC sections 101.338 and 101.339 submitted on October 24, 2006. EPA is also not taking action at this time on the revisions to the general air quality definitions at 30 TAC Section 101.1 or the revisions to the System Cap Trading Program at 30 TAC sections 101.383, and 101.385 submitted on August 16, 2007. These severable revisions remain under review by EPA and will be addressed in separate actions.

II. What is the background for this action?

The ERC Program, SIP-approved by EPA on September 6, 2006, establishes a market-based trading program for the generation and use of emission credits (generated and used at a specified emission rate, tons per year) to provide flexibility for sources in complying with certain State and Federal requirements. Generally, emission reductions of criteria pollutants (excluding lead) or precursors of criteria pollutants for which an area is designated may be banked and used as emission credits. EPA's September 6, 2006, final approval of the ERC program addressed the original submission of the program on December 23, 1997, and the subsequent revisions on January 18, 2001; April 14, 2002; January 17, 2003; and December 6, 2004.

Since our September 6, 2006, final approval, TCEQ has revised the ERC program to address the commitments of the DERC conditional approval. Additionally, the TCEQ adopted revisions to the ERC program consistent with the requirements of Senate Bill 784, adopted during regular session, 2005, of the 79th Texas Legislature. Senate Bill 784 allows for greater flexibility in the generation and use of international emission reductions. These revisions were adopted by the TCEQ on October 4, 2006, and became effective on October 26, 2006. The adopted regulations were submitted to EPA as a SIP revision on October 24, 2006. TCEQ has also promulgated revisions to the ERC program that update the cross-references to the new numbering structure in 30 TAC Chapter 117. These revisions were adopted on July 25, 2007, and became effective on August 16, 2007. The adopted regulations were submitted to EPA as a SIP revision on August 16, 2007.

III. What are EPA's responses to comments received on the proposed action?

EPA received no comments on our proposed rulemaking.

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 30, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" under Chapter 101 is amended by:

■ a. Revising the entries for Sections 101.302 and 101.306 under Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading.

■ b. Adding an entry for Section 101.305 under Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading, in numerical order.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Chapter 101—General Air Quality Rules				
*	*	*	*	*
Subchapter H—Emissions Banking and Trading Division 1—Emission Credit Banking and Trading				
*	*	*	*	*
Section 101.302	General Provisions	7/25/2007	5/18/10 [Insert FR page number where document begins].	
*	*	*	*	*
Section 101.305	Emission Reductions Achieved Outside the United States.	10/4/2006	5/18/10 [Insert FR page number where document begins].	
Section 101.306	Emission Credit Use	7/25/2007	5/18/10 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010–11683 Filed 5–17–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 0906181067–0167–02]

RIN 0648–XP96

2010 Annual Determination for Sea Turtle Observer Requirements

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final Annual Determination (AD) for 2010, pursuant to its authority under the Endangered Species Act (ESA). Through this AD, NMFS identifies commercial fisheries operating in state and Federal waters in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate existing measures to reduce or prevent prohibited sea turtle takes, and to determine whether additional measures to implement the prohibition against sea turtle takes may be necessary. Fisheries identified through this process will remain on the AD, and therefore required to carry observers upon NMFS' request, for 5 years.

DATES: Effective June 17, 2010.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Kristy Long, Office of Protected Resources, 301–713–2322; Ellen Keane, Northeast Region, 978–282–8476; Dennis Klemm, Southeast Region, 727–824–5312; Elizabeth Petras, Southwest

Region, 562–980–3238; Kim Maison, Pacific Islands Region, 808–944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Marine Mammal Protection Act (MMPA) List of Fisheries (LOF) may be obtained at *http://www.nmfs.noaa.gov/pr/interactions/lof/* and information regarding Marine Mammal Stock Assessment Reports may be obtained at *http://www.nmfs.noaa.gov/pr/sars/* or from any NMFS Regional Office at the addresses listed below:

NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814–4700.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.*, NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green turtles in Florida and on the Pacific coast of Mexico and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is one of the main sources of sea turtle injury and mortality nationwide. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Sections 9 and 11 of the ESA authorize the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. In some cases, NMFS has been able to make this determination because the fishery is conducted with modified gear or modified fishing practices that NMFS has been able to evaluate. However, for some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-turtle interactions. Therefore, any incidental take of sea turtles in those fisheries is unlawful as it has not been exempted from the ESA prohibition on take.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) to establish procedures through which each year NMFS will identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, either recreational or commercial, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the U.S. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS and/or interested cooperating entities will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to determine whether additional measures are needed to implement ESA take prohibitions and conserve turtles.

Process for Developing an Annual Determination

Pursuant to 50 CFR 222.402, the Assistant Administrator for Fisheries, NOAA (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, develops a proposed annual determination identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provides an opportunity for public comment on any proposed determination. The determination is based on the best available scientific, commercial, or other information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; or qualitative data from logbooks or fisher reports. Specifically, this determination is based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

The AA used the most recent version of the annually published MMPA List of Fisheries (LOF) as the comprehensive list of commercial fisheries for consideration. The LOF includes all known state and Federal commercial fisheries that occur in U.S. waters. The classification scheme used for fisheries on the LOF would not be relevant to this process. Unlike the LOF process, an annual determination may also include recreational fisheries likely to interact with sea turtles on the basis of the best available information.

NMFS consulted with appropriate state and Federal fisheries officials and other entities to identify which fisheries, both commercial and recreational, should be considered in the annual determination. Although the

comments and recommendations provided to NMFS by states were based upon the best available information on their fisheries, NMFS received more recommendations for fisheries to include on the 2010 AD than is feasible at this time based on the four previously noted criteria (50 CFR 222.402(a)).

The AD is not an exhaustive or comprehensive list of all fisheries with documented or suspected takes of sea turtles; there are additional fisheries that NMFS remains concerned about. For these additional fisheries, NMFS may already be addressing incidental take through another mechanism (e.g., rulemaking to implement modifications to fishing gear and/or practices) or will consider adding them to future annual determinations based on the four previously noted criteria (50 CFR 222.402(a)).

Notice of a final determination, such as the 2010 AD, will be published in the **Federal Register** and made in writing to individuals permitted for each fishery identified for monitoring. NMFS will also notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and other means, as appropriate. Once included in a final determination, a fishery will remain eligible for observer coverage for five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines that more than five years are needed to obtain sufficient scientific data, NMFS will include the fishery in the proposed AD again prior to the end of the fifth year. As part of the 2010 AD, NMFS included, to the extent practicable, information on the fisheries or gear types to be sampled, geographic and seasonal scope of coverage, and any other relevant information. After publication of a final AD, a 30–day delay in effective date for implementing observer coverage will follow, except for those fisheries where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30–day delay.

Implementing Observer Coverage in a Fishery Listed on the 2010 Annual Determination

The design of any observer program for fisheries identified through the AD process, including how observers will be allocated to individual vessels, would vary among fisheries, fishing sectors, gear types, and geographic regions and would ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. During the program design, NMFS will be guided by the following standards for distributing and placing observers among fisheries identified in the AD and vessels in those particular fisheries:

(1) The requirements to obtain the best available scientific information;

(2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

Vessels subject to observer coverage under this rule must comply with observer safety requirements specified at 50 CFR 600.725 and 50 CFR 600.746. Specifically, 50 CFR 600.746(c) requires vessels to provide adequate and safe conditions for carrying an observer and conditions that allow for operation of normal observer functions. To provide such conditions, a vessel must comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) and possess a current USCG Commercial Fishing Vessel Safety Examination decal or a USCG certificate of examination. A vessel that fails to meet these requirements at the time an observer is to be deployed on the vessel is prohibited from fishing, 50 CFR 600.746(f), unless NMFS determines that an alternative platform (e.g., a second vessel) may be used. In any case, all fishermen on a vessel must cooperate in the operation of observer functions. Observer programs designed or carried out in accordance with 50 CFR 222.404 would be required to be consistent with existing observer-related NOAA policies and regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), Observer Health and Safety regulations (50 CFR 600), and other relevant policies.

Fisheries not included on the 2010 AD may still be observed under a different authority than the ESA (e.g., MMPA, MSA).

Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *http://www.st.nmfs.gov/st4/nop/*; links to individual regional observer programs may also be found on this website.

Comments and Responses

NMFS received comments from 3 individual members of the public, Environmental Defense Fund, Oceana, Garden State Seafood Association, Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, Mid-Atlantic Fishery Management Council, and the States of Connecticut, Maryland, and New Jersey on the proposed 2010 AD (74 FR 59508, November 18, 2009). Comments on issues outside the scope of the AD were noted, but are not responded to in this final rule.

General Comments

Comment 1: Several commenters support including 19 fisheries on the 2010 AD.

Response: NMFS agrees and includes 19 fisheries on the 2010 AD.

Comment 2: The State of New Jersey inquired whether the fisheries to be observed listed in Table 1 are in priority order.

Response: Table 1 is somewhat prioritized by gear type (trawl, gillnet, trap/pot, and pound net/weir/seine); specific fisheries within those gear types are alphabetized. The order of those gear types represents NMFS' current priorities under the NMFS' Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries ("Strategy"). Fisheries operating in the Pacific Ocean will be considered similarly. However, NMFS' Regional Observer Programs are implemented somewhat independently based on several factors including available funding, staff resources, the number of certified observers in a given region, etc. Therefore, NMFS will consider all of these factors when deciding which fisheries to observe in a given year. For example, increasing coverage within existing observer programs may be more feasible than beginning a new program in a given year based on available funding and staff resources in a particular region.

Comment 3: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association inquired how and when fisheries are removed from the AD. The commenters suggest that there be a process outlined in this final rule for removing fisheries before the 5 years expire.

Response: The amount of time that fisheries remain on the AD was the subject of the previous rulemaking that implemented the observer requirement (72 FR 43176, August 3, 2007); this rulemaking does not amend those regulations or implement new regulations. The regulations at 50 CFR 222.403(a) specify that once selected, a fishery remains eligible for observer coverage for five years.

Comment 4: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association suggest adding a criterion for including fisheries on the AD that considers past observer coverage.

Response: The criteria that NMFS considers when proposing to include a fishery on the AD were the subject of the previous rulemaking that implemented the observer requirement (72 FR 43176, August 3, 2007); this rulemaking does not amend those regulations or implement new regulations.

Comment 5: The State of Connecticut notes that the report from the 2008 Observer Workshop includes a statement about using state observers under NMFS' authority to implement this observer requirement and they would like to have state observers certified for this purpose.

Response: Since the workshop in 2008, NMFS has determined that the regulations in 50 CFR 222.402 provide authorization only for Federal observer programs implemented by NMFS. The State may be able to act as the Observer Service Provider and enter into an agreement with NMFS contingent upon certification of those observers by NMFS (i.e., those state observers are NMFS-certified).

Comment 6: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association suggests that broad gear categories do not pose similar risks to sea turtles and recommends that fisheries be examined on a case-by-case basis for temporal/spatial overlap with turtle distribution, while accounting for regional fishing practices and past/current observer coverage.

Response: The universe of commercial fisheries considered for the Annual Determination is based on the MMPA LOF. If the LOF defines a fishery based on broad gear type, NMFS must also use that same fishery on the Annual Determination. If the commenters have suggestions for re-defining fisheries on the MMPA LOF, they should consider commenting during the 2011 LOF process. See *Comments on Observer Programs* below for additional information on how past observer coverage is factored into sampling designs.

Comment 7: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association inquired how this observer requirement would yield statistically rigorous information when statistically valid information or accurate data on the status and trends of sea turtles has not been provided.

Response: This comment appears to be directed at the rule promulgated by NMFS on August 3, 2007, codified at 50 CFR Part 222 Subpart D, and is thus outside the scope of this rulemaking. However, NMFS responds to clarify that, as stated in the preamble to that rulemaking: "Sampling designs for all NMFS observer programs are developed to provide statistically valid information and to produce results that will contribute to the body of best available science. The sampling design will vary depending on many factors, including the fishery to be observed, the spatial and temporal variability in the fishery and species observed, and the overall goals of the observer program. Once a fishery is selected for observer coverage, a sampling design will be developed to yield statistically valid results." [72 FR 43176, August 3, 2007]

Regardless of the data available on the status and trends of sea turtles, this program will collect statistically valid information on sea turtle takes. NMFS continues to work to better understand the status and trends of sea turtle populations, including through survey efforts, population modeling, and status reviews.

Comment 8: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association further inquired how bycatch rates and estimates would be applied during ESA section 7 and 10 consultations as well as broad-based gear regulations.

Response: This comment is beyond the scope of this rulemaking. The preamble to the rule codified at 50 CFR Part 222 Subpart D describes how the information gathered will be used (72 FR 43176, August 3, 2007). Because data have not yet been collected nor analyzed, NMFS can not now identify what, if any, management actions it might take in response to those data.

Comments on Observer Programs

Comment 9: Environmental Defense Fund recommends using new technologies, including video monitoring to eliminate observer bias, increase level of monitoring (as it becomes more cost effective) and monitor unobservable vessels.

Response: New technologies for monitoring fisheries (commonly referred to as "electronic monitoring" or EM) offer many benefits of interest to NMFS. However, their efficacy in meeting monitoring objectives varies by fishery and monitoring goal. EM studies, including video monitoring, are ongoing in many NMFS regions, and the results are promising. The ability of these technologies to meet monitoring objectives has primarily been evaluated in experimental situations; many questions still remain as to their efficacy and true cost. NMFS generally supports the use of EM to augment at-sea observer coverage, and fully supports the use of EM, as well as other alternative monitoring methods, to cover unobservable vessels. NMFS will continue to work through its cooperative research and fisheries observer programs to evaluate how EM technology may be used to supplement observer programs, including those implemented under the AD.

Comment 10: The State of New Jersey requested training in observer protocols for state personnel to augment NMFS coverage in state waters under State authority and increase effectiveness.

Response: The Northeast Fisheries Observer Program (NEFOP) has helped individual states develop their own state fisheries observer programs, and will continue to do so as long as the demand doesn't compromise the training needs of NEFOP. The support NEFOP provides includes training, logs, manuals, protocols and entry screens.

Comment 11: The State of New Jersey inquired how observer coverage will be allocated across fisheries and requested that the State be consulted each year during the vessel selection process.

Response: Observer coverage is allocated in proportion to fishing effort by time/area. All active vessels, indentified for observer coverage within a particular time/area, may be randomly selected. Current NEFOP protocols prohibit repeat trips on the same vessel, during a 30 day period, if other vessels are active and have not been selected. NEFOP attempts to ensure that observer coverage is fair and equitable, without overburdening a particular fisherman or fishery. NEFOP posts the sea day schedule on the following website: *http://www.nefsc.noaa.gov/femad/fsb*. This website provides the chance for all interested parties to review the planned coverage. NEFOP would welcome the opportunity to work with individual states when developing a list of vessels to be selected for that proposed coverage.

Comment 12: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association inquired how NMFS will implement the requirements in a way that no fisherman or group of fishermen will be expected to carry excessive observer coverage. Further, Garden State

Seafood Association believes that NJ fishermen have been overburdened with an excessive share of observer training trips/coverage (e.g., 72 trips in 2005).

Response: As previously described, NEFOP makes every legitimate attempt to not overburden a particular fisherman or fishery. Days are allocated in proportion to fishing effort by time/area. From 2000 to 2005, the NEFOP grew from 1,200 sea days per year to 12,000 sea days per year; increasing from 12 to 120 observers. That increase necessitated additional training trips. Training trips require that an experienced observer shadow a new observer until they are fully certified in all sampling protocols. Gillnet sampling protocols, per NEFSC scientists conducting harbor porpoise bycatch analysis, require observers to observe the net for harbor porpoise "fall outs" during retrieval, instead of sampling discarded fish. These trips are referred to as "limited" gillnet trips because of the limited sampling of fish. All of the gillnet days on the NEFOP sea day schedule for protected species are "limited" days. This includes both New England and mid-Atlantic areas. In addition to these "limited" gillnet days, scientists conducting fish stock assessments also populated the sea day schedule with gillnet days, but unlike the "limited" days, complete sampling of all discards was required. The majority of these "complete" days were assigned to areas in New Jersey and north. Prior to December 2005, in order to provide the best training trips possible, new observers from southern ports were often sent to New Jersey, or ports farther north, for those important training trips. This resulted in proportionally more training trips occurring in New Jersey. Once this problem was brought to the attention of NEFOP, protocols were changed so that new observers, during their training trips, could use "complete" sampling protocols regardless of the port used for training. This change was made in December 2005, and since then NEFOP has not received any reports that this issue continues to be a problem.

Comment 13: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association expressed concern about the competing needs (e.g., population dynamics, food habits, protected species, fisheries management, etc.) for a given observer program and how NMFS intends to balance those needs with observer program design/implementation. The commenters also note that the proposed 2010 AD indicates that the program design could be the responsibility of a regional office, science center, or observer program. The commenters suggest that clear lines of responsibility should be placed on program design/implementation.

Response: Within each of the six NMFS Regional Observer Programs, the responsibility for observer program design and implementation is clearly defined. Manual and protocol revisions occur regularly based on the changing needs of end users (e.g., NMFS managers). For example, NEFOP works closely with all end users to ensure that the data collected by observers is relevant and meets their needs. Those needs, for example, could include compliance monitoring, data collection for regulatory development, or data collection for stock assessments. To date, NEFOP has been able to successfully balance the needs of all end users.

Comment 14: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association suggested that NMFS consider social and economic burdens of sea turtle observer coverage with respect to total observer coverage.

Response: See Response to *Comment 11* and the Classification section below.

Comment 15: One commenter inquired whether minimum standards for selecting a vessel, in each of the fisheries, to carry an observer have been identified. The commenter notes potential for introducing bias and suggests NMFS Observer Programs develop methods for reducing the number of unobservable vessels.

Response: With the exception of certain safety requirements (e.g., possessing a current U.S. Coast Guard commercial fishing vessel safety decal), minimum national standards for vessel selection do not exist. Regional observer programs perform routine analyses to diagnose and correct for bias in vessel selection. A 2006 NMFS workshop (report available from: *http://www.st.nmfs.noaa.gov/st4/nop/workshops.html*) reviewed vessel selection procedures and documented analytical methods and tools that could be used to assess the occurrence and magnitude of bias. Workshop participants identified alternative selection methods that could reduce or eliminate sources of bias, such as using alternative platforms or electronic monitoring to address unobservable vessels.

Comments on Trawl Fisheries

Comment 16: The Mid-Atlantic Fishery Management Council suggested removing *Illex* from the list of species targeted with flynets because while they are included in the mid-Atlantic bottom trawl general category, the *Illex* fishery is not prosecuted using flynets.

Response: The flynet fishery description in the proposed 2010 AD is based on the fishery as defined under the Marine Mammal Protection Act (LOF). NMFS will consider revising the characterization of the flynet fishery in a future LOF.

Comment 17: Cape Seafoods Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association recommend removing the mid-Atlantic mid-water trawl (including pair trawl) for mackerel from the 2010 AD as optimum mackerel trawl fishing occurs in areas where the sea surface temperature is less than 7 degrees Celsius. The commenters note that this temperature regime is not in the range one would expect sea turtles to normally thrive.

Response: Sea turtles are poikilotherms whose internal body temperature is affected by the ambient environment. They undertake routine migrations along the coast limited by seasonal water temperatures. Loggerheads have been observed in waters with surface temperatures of 7° to 30° C, but water temperatures ≥11° C are most favorable (Shoop and Kenney 1992; Epperly *et al.*, 1995). During the CETAP aerial survey of the outer continental shelf from Cape Hatteras, North Carolina, to Cape Sable, Nova Scotia, leatherbacks were sighted in waters within a sea surface temperature range similar to that observed for loggerheads; from 7°–27.2° C. However, leatherbacks appear to have a greater tolerance for colder waters in comparison to loggerhead sea turtles since more leatherbacks were found at lower temperatures (Shoop and Kenney 1992).

As defined on the LOF, the mid-water trawl fishery for Atlantic mackerel is one component of the overall mid-Atlantic mid-water trawl (including pair trawl) fishery. This fishery targets Atlantic mackerel, chub mackerel, and other miscellaneous pelagic species (e.g., Atlantic herring). The component of the fishery targeting mackerel uses the same gear type and fishing practices as the rest of the fishery targeting other species. Therefore, NMFS is including this fishery on the 2010 AD to more adequately observe this gear type in areas and during times where it overlaps with sea turtle distribution.

Comments on Gillnet Fisheries

Comment 18: The State of Connecticut provided information on

the Long Island Sound commercial gillnet fishery operating in CT waters. The State noted that there have been less than 19 active fixed gillnetters operating during the months of May through October, no interactions with sea turtles have been documented, and there were a limited number of sea turtle strandings in CT waters (n=12) from 1998 to 2004. The commenter states that it is unlikely that there are enough turtles present in CT waters and likely to be at risk to justify observer coverage in this fishery. The commenter also suggests that monitoring this fishery would not contribute to meaningful information on sea turtle bycatch.

Response: The portion of the Long Island Sound inshore gillnet fishery operating in CT waters is one component of the Long Island Sound inshore gillnet fishery as defined on the LOF. The fishery includes all gillnet fisheries setting nets west of a line from the north fork of the eastern end of Long Island, NY (Orient Point to Plum Island to Fisheries Island) to Watch Hill, RI (59 FR 43703, August 25, 1994). Northeast waters are an important developmental habitat for hard-shelled sea turtles and sea turtles occur in Long Island Sound. As described in the proposed rule, sea turtles are vulnerable to entanglement and drowning in gillnets. Past observer coverage in this fishery is limited to a small number of federally observed trips. Therefore, NMFS is including this fishery on the 2010 AD to better understand this fishery and how it may impact sea turtles. NMFS will consider information on sea turtle distribution and the spatial and temporal extent of gillnet fisheries operating in Long Island Sound in designing an appropriate sampling program for this fishery.

Comment 19: Garden State Seafood Association recommends excluding NJ-based vessels that target bluefish and croaker in the Mid-Atlantic gillnet fishery because there were 179 trips observed between 2000 and 2005 and no sea turtle takes were documented.

Response: Fisheries observers in the mid-Atlantic have documented take of loggerhead, green, Kemp's ridley, and leatherback turtles in sink gillnet gear from Cape Cod to North Carolina. Observed interactions have occurred on trips targeting a variety of species, including bluefish and Atlantic croaker. From 1995–2006, the average annual bycatch estimate of loggerheads captured in mid-Atlantic sink gillnet gear was 350 turtles (Murray 2009). Bycatch rates were correlated with latitude, sea surface temperature, and mesh size. Highest predicted bycatch rates occurred in warm waters of the southern mid-Atlantic, in large-mesh (≤ 17.8 cm) gillnet gear (Murray 2009).

Gillnet fisheries, including those targeting bluefish and croaker, that overlap with sea turtle distribution have the potential to take sea turtles.

Typically, observer coverage is allocated in proportion to fishing effort, by month and port, with vessels selected randomly for coverage. Vessels are selected based on gear type, not target species. If the majority of the gillnet vessels fishing out of a particular port targeted bluefish, the data should reflect that.

To better understand the interactions of these fisheries with sea turtles, NMFS is including the mid-Atlantic gillnet fishery on the 2010 AD to focus observer coverage during times and areas where sea turtles are known to occur. Information on sea turtle distribution and the spatial and temporal extent of these fisheries will be considered in designing an appropriate sampling program for the fishery.

Comment 20: Oceana recommended including all Gulf of Mexico and Caribbean gillnet fisheries on the 2010 AD because of similarities to other gillnet fisheries as well as the large number of participants.

Response: NMFS recognizes that gillnet fisheries in areas other than those identified in the first AD may pose similar issues for sea turtles. However, the regulations implementing this observer requirement at 50 CFR 222.402 specifically state that the annual determination will be based on the extent to which: (1) The fishery operates in the same waters and at the same time as sea turtles are present; (2) The fishery operates at the same time or prior to elevated sea turtle strandings; or (3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and (4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so. Although many fisheries meet one or more of the first three requirements, NMFS must also consider the fourth criterion, which is dependent upon available agency resources. Given the agency's current resources for implementing this program, NMFS is not including any gillnet fisheries in the Gulf of Mexico or Caribbean on the 2010 AD. However, this is an annual process and NMFS will consider including additional fisheries on future ADs based upon the aforementioned criteria.

Comments on Trap/Pot Fisheries

Comment 21: The State of Connecticut provided information on the commercial lobster pot fishery in Connecticut and a description of the state monitoring program. Specifically, since 1982, the CT Department of Environmental Protection's Marine Fisheries Division has observed 13,693 multi-trap trawl hauls on 643 commercial lobster trips in Long Island Sound. During the program, a single take of a sea turtle was documented in August 2009; a leatherback turtle was observed entangled in a vertical line.

Response: NMFS appreciates receiving detailed information on the monitoring program and CT commercial lobster pot fishery. This fishery is one component of the overall Northeast/Mid-Atlantic American Lobster Trap/Pot fishery, which operates from Maine to New Jersey and may extend as far south as Cape Hatteras, NC. As noted by the commenter and described in the proposed rule (74 FR 59508, November 18, 2009), sea turtles are known to become entangled in the end lines (also called vertical lines) of trap/pot gear. There have also been anecdotal reports that sea turtles may interact with the trap/pot itself. NMFS currently has only limited data on sea turtle bycatch in this fishery. NMFS is including this fishery, focusing on waters south of Massachusetts where sea turtles more commonly occur, on the 2010 AD to obtain information on sea turtle bycatch and how turtles may interact with the gear. The information provided will be considered in designing an appropriate sampling program for this fishery.

Comments on Longline Fisheries

Comment 22: Oceana recommends including all longline fisheries, both pelagic and bottom longlines, on the 2010 AD. Specifically, the commenter noted the need for additional observer coverage in the Gulf of Mexico reef fish bottom longline fishery as well as new observer programs for the Northeast/mid-Atlantic bottom longline, Caribbean snapper grouper and other bottom longline fisheries.

Response: The purpose of the sea turtle observer requirement and the AD is ultimately to implement ESA sections 9 and 4(d), which prohibit the incidental take of endangered and threatened sea turtles, respectively. Another purpose of the AD is to learn more about sea turtle-fishery interactions in the identified fisheries in order to have information necessary to provide exemptions to the take prohibitions, consistent with ESA sections 4(d), 7 and 10, if warranted for certain fisheries.

NMFS did not include any pelagic longline fisheries on the 2010 AD because all commercial pelagic longline

fisheries as included on the MMPA LOF are currently observed for sea turtles and incidental takes authorized. Similarly, the Gulf of Mexico reef fish bottom longline fishery is currently observed for sea turtles and takes authorized. Therefore, including these fisheries on the 2010 AD would be duplicative at this time.

NMFS evaluated the aforementioned criteria in 50 CFR 222.402 and determined that the agency could not satisfy the fourth criterion at this time with regard to including the other bottom longline fisheries recommended by the commenter. However, this is an annual process and NMFS will consider including additional fisheries, including longline fisheries, on future ADs.

Comments on Recreational Fisheries

Comment 23: Cape Seafoods Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association suggests noting that recreational fisheries are responsible for sea turtle deaths and recommends that NMFS specify a clear process for including recreational fisheries on the AD. Specifically, they recommend using the new recreational fishing registry implemented in January 2009 to identify fisheries.

Response: NMFS recognizes that recreational fisheries may also incidentally take sea turtles and, therefore, included recreational fisheries under the observer requirement at 50 CFR 222.401.

NMFS appreciates the commenter's suggestion to use the recreational fishing registry and will consider including recreational fisheries on future ADs.

Comment 24: Oceana recommended including recreational fisheries on the 2010 AD.

Response: NMFS considered recreational fisheries in developing the proposed 2010 AD, but the agency did not feel we had enough information to develop an observer program. Further, NMFS determined that the agency could not satisfy the criterion at 50 CFR 222.402(a)(4) required to include a fishery on the AD. As noted in the response to Comment 23, NMFS will use the information from the recreational fishing registry, along with other information from the Marine Recreational Information Program, to obtain the necessary information to consider including specific recreational fisheries on a future AD.

Addition of Fisheries on the 2010 Annual Determination

NMFS is including 19 fisheries (17 in the Atlantic Ocean and Gulf of Mexico and 2 in the Pacific Ocean) on the 2010 AD. These 19 fisheries, described below and listed in Table 1, represent several gear types, including trawl, gillnet, trap/pot, and pound net/weir/seine. For a complete description of the information and state recommendations NMFS used in developing the 2010 AD, please see the proposed rule (74 FR 59508, November 18, 2009).

Trawl Fisheries

Based on the information provided by states and the best available scientific information, NMFS includes the following trawl fisheries on the 2010 AD.

Atlantic Shellfish Bottom Trawl Fishery

The Atlantic shellfish bottom trawl fishery (estimated 972 vessels/persons) encompasses the calico scallop trawl, crab trawl, Georgia/South Carolina/Maryland whelk trawl, Gulf of Maine/Mid-Atlantic sea scallop trawl, and Gulf of Maine northern shrimp trawl (71 FR 2006, January 4, 2006). This fishery extends from Maine through Florida. NMFS is particularly interested in observing this fishery in waters off of Massachusetts and south as sea turtles more commonly occur in this area. NMFS includes this fishery on the 2010 AD based on documented interactions with sea turtles in this and other bottom trawl fisheries and the need to obtain more information on the interactions in this fishery.

Mid-Atlantic Bottom Trawl Fishery

Bottom otter trawl nets include a variety of net types, including flynets, which are high profile trawls. The "Mid-Atlantic bottom trawl fishery" as described in this proposed AD includes both the mid-Atlantic bottom trawl fishery and the mid-Atlantic flynet fishery as defined on the LOF.

The Mid-Atlantic bottom trawl fishery (estimated <1,000 vessels/persons), as defined on the LOF, uses bottom trawl gear to target species including, but not limited to, bluefish, croaker, monkfish, summer flounder (fluke), winter flounder, silver hake (whiting), spiny dogfish, smooth dogfish, scup, and black sea bass. The fishery occurs year-round from Cape Cod, MA, to Cape Hatteras, NC, in waters west of 72° 30' W. long. and north of a line extending due east from the North Carolina/South Carolina border.

The Mid-Atlantic flynet fishery (estimated 21 vessels/persons), as defined on the LOF, is a multi-species fishery composed of nearshore and offshore components that operate along the east coast of the mid-Atlantic United States. The nearshore fishery operates from October to April inside of 30 fathoms (180 ft; 55 m) from New Jersey to North Carolina. This nearshore fishery targets Atlantic croaker, weakfish, butterfish, harvestfish, bluefish, menhaden, striped bass, kingfish species, and other finfish species. The offshore component operates from November to April outside of 30 fathoms (180 ft; 55 m) from the Hudson Canyon off New York, south to Hatteras Canyon off North Carolina. These deeper water fisheries target bluefish, Atlantic mackerel, *Loligo* squid, black sea bass, and scup (72 FR 7382, February 15, 2007).

NMFS includes this fishery on the 2010 AD to more adequately observe this gear type where and when it overlaps with sea turtle distribution.

Mid-Atlantic Mid-water Trawl (including pair trawl) Fishery

The Mid-Atlantic mid-water trawl fishery (estimated 620 vessels/persons) primarily targets Atlantic mackerel, chub mackerel, and miscellaneous other pelagic species. NMFS includes this fishery on the 2010 AD to more adequately observe this gear type in areas and during times where it overlaps with sea turtle distribution.

Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl Fishery

The Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery (estimated >18,000 vessels/persons) targets shrimp using various types of trawls; NMFS would focus on the component of the fishery that uses skimmer trawls for the 2010 AD. Skimmer trawls are used primarily in inshore/inland shallow waters (typically less than 20 ft (6.1 m)) to target shrimp. NMFS is including the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery, to focus observer coverage in the component of the fishery that uses skimmer trawls, on the 2010 AD.

Gillnet Fisheries

CA Halibut, White Seabass and Other Species Set Gillnet Fishery (>3.5 in mesh)

The CA halibut, white seabass, and other species set gillnet fishery (estimated 58 vessels/persons) targets halibut, white seabass, and other species from the U.S.-Mexico border north to Monterey Bay using 200 fathom (1,200 ft; 366 m) gillnet with a stretch mesh size of 8.5 in (31.6 cm). NMFS includes this fishery on the 2010 AD because it

operates in the same waters that turtles are known to occur and this gear type is known to result in the incidental take of sea turtles based on documented takes in similar fisheries.

CA Yellowtail, Barracuda, and White Seabass Drift Gillnet Fishery (mesh size >3.5 in. and <14 in.)

The CA yellowtail, barracuda, and white seabass drift gillnet fishery (24 vessels/persons) targets primarily yellowtail and white seabass, and secondarily barracuda, with target species typically determined by market demand on a short-term basis. NMFS includes this fishery on the 2010 AD because it operates in the same waters that turtles are known to occur and this gear type is known to result in the incidental take of sea turtles based on documented takes in similar fisheries.

Chesapeake Bay Inshore Gillnet Fishery

The Chesapeake Bay inshore gillnet fishery (estimated 45 vessels/persons) targets menhaden and croaker using gillnet gear with mesh sizes ranging from 2.75–5 in (7–12.7 cm), depending on the target species. NMFS includes this fishery on the 2010 AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, and the fishery operates during a period of high sea turtle strandings.

Long Island Inshore Gillnet Fishery

The Long Island Sound inshore gillnet fishery (estimated 20 vessels/persons) includes all gillnet fisheries setting nets west of a line from the north fork of the eastern end of Long Island, NY (Orient Point to Plum Island to Fishers Island) to Watch Hill, RI (59 FR 43703, August 25, 1994). NMFS includes this fishery in the 2010 AD because sea turtles are known to occur in the same areas where the fishery operates and takes have been documented in similar gear types.

Mid-Atlantic Gillnet Fishery

The Mid-Atlantic gillnet fishery (estimated 7,596 vessels/persons) targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish. NMFS includes this fishery on the 2010 AD to focus observer coverage during times and in areas where sea turtles are known to occur.

Northeast Sink Gillnet Fishery

The Northeast sink gillnet fishery (estimated ≤6,455 vessels/persons) targets Atlantic cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, spiny dogfish, monkfish, silver hake, red hake, white hake, ocean pout, skate spp, mackerel, redfish, and shad. NMFS includes this fishery on the 2010 AD to focus observer coverage during times and in areas where sea turtles are known to occur, particularly in waters off Massachusetts and waters south of this area.

North Carolina Inshore Gillnet Fishery

The NC inshore gillnet fishery (94 vessels/persons) targets species including, but not limited to, southern flounder, weakfish, bluefish, Atlantic croaker, striped mullet, spotted seatrout, Spanish mackerel, striped bass, spot, red drum, black drum, and shad. This fishery includes any fishing effort using any type of gillnet gear, including set (float and sink), drift, and runaround gillnet for any target species inshore of the COLREGS lines in North Carolina. NMFS includes this fishery on the 2010 AD because the fishery overlaps spatially with areas used by sea turtles, often at relatively high densities and high takes have been previously documented. A more extensive, longer-term observer program is needed to adequately assess the extent and impact of the all components of the inshore North Carolina gillnet fishery on sea turtles.

Southeast Atlantic Gillnet Fishery

The Southeast Atlantic gillnet fishery (779 estimated vessels/persons) targets finfish including, but not limited to, king mackerel, Spanish mackerel, whiting, bluefish, pompano, spot, croaker, little tunny, bonita, jack crevalle, cobia, and striped mullet. NMFS includes this fishery on the 2010 to focus observer coverage during times and in areas where sea turtles are known to occur.

Trap/Pot Fisheries

Atlantic Blue Crab Trap/Pot Fishery

The Atlantic blue crab trap/pot fishery (estimated ≤16,000 vessels/persons) targets blue crab using pots baited with fish or poultry typically set in rows in shallow water. NMFS includes this fishery on the 2010 AD to target observer coverage more specifically to obtain information on sea turtle bycatch and how sea turtles may be interacting with trap/pot gear.

Atlantic Mixed Species Trap/Pot Fishery

The Atlantic mixed species trap/pot fishery (unknown number of vessels/persons) targets species including, but not limited to, hagfish, shrimp, conch/whelk, red crab, Jonah crab, rock crab, black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), white hake, spot, skate, catfish, and stone crab. This fishery as defined on the MMPA LOF also includes American eel as a target species; however, there is also a Category III American eel trap/pot fishery listed on the LOF. Therefore, NMFS does not consider American eel to be a target species in the Atlantic mixed species trap/pot fishery and will correct this oversight in a future LOF. NMFS includes this fishery in the 2010 AD to target observer coverage more specifically to obtain information on sea turtle interactions and how sea turtles may be interacting with trap/pot gear, particularly in waters off of Massachusetts and waters south of this area, as sea turtles more commonly occur in these areas.

Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery

The Northeast/Mid-Atlantic American lobster trap/pot fishery (estimated 13,000 vessels/persons) targets American lobster primarily with traps, while 2–3 percent of the target species is taken by mobile gear (trawls and dredges). NMFS includes this fishery in the 2010 AD to target observer coverage more specifically to obtain information on sea turtle bycatch and how sea turtles may be interacting with trap/pot gear, particularly in waters off of Massachusetts and waters south of this area, as sea turtles more commonly occur in these areas.

Pound Net/Weir/Seine Fisheries

Mid-Atlantic Haul/Beach Seine Fishery

The Mid-Atlantic haul/beach seine fishery (estimated >221 vessels/persons) targets striped bass, mullet, spot, weakfish, sea trout, bluefish, kingfish, and harvest fish using seines with one end secured (e.g., swipe nets and long seines) and seines secured at both ends or those anchored to the beach and hauled up on the beach. NMFS includes this fishery on the 2010 AD based on suspected interactions with sea turtles given the nature of the gear and fishing methodology in addition to effort overlapping with sea turtle distribution. In the Chesapeake Bay, the fishery operates at the same time as historically elevated sea turtle strandings.

Mid-Atlantic Menhaden Purse Seine Fishery

The Mid-Atlantic menhaden purse seine fishery (22 estimated vessels/persons) targets menhaden and thread herring using purse seine gear. NMFS includes this fishery on the 2010 AD to focus observer coverage in times and areas of sea turtle distribution and learn more about the interactions between this fishery and sea turtles.

Virginia Pound Net Fishery

The Virginia pound net fishery (estimated 41 vessels/persons) targets species including, but not limited to, croaker, menhaden, mackerel, weakfish, and spot, using stationary gear in nearshore Virginia waters, primarily in the Chesapeake Bay and its tributaries. NMFS includes this fishery on the 2010 AD to assess interactions between pound net gear and sea turtles and to evaluate the effectiveness of the modified gear. Because some vessels in this fishery may be too small to carry observers, NMFS would consider observing the fishery using both traditional methods as well as an alternative platform.

U.S. Mid-Atlantic Mixed Species Stop Seine/Weir/Pound Net (except the NC roe mullet stop net) Fishery

The Mid-Atlantic mixed species stop seine/weir/pound net fishery (estimated 751 vessels/persons) targets several species, including, but not limited to, weakfish, striped bass, shark, catfish, menhaden, flounder, gizzard shad, and white perch. NMFS includes this fishery on the 2010 AD to better understand the nature and extent of these interactions in the mid-Atlantic.

TABLE 1 – STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE 2010 ANNUAL DETERMINATION

Fishery	Years Eligible to Carry Observers
Trawl Fisheries	
Atlantic shellfish bottom trawl	2010–2014
Mid-Atlantic bottom trawl	2010–2014
Mid-Atlantic mid-water trawl (including pair trawl)	2010–2014
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2010–2014
Gillnet Fisheries	
CA halibut, white seabass and other species set gillnet (>3.5 in mesh)	2010–2014
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2010–2014
Chesapeake Bay inshore gillnet	2010–2014
Long Island inshore gillnet	2010–2014
Mid-Atlantic gillnet	2010–2014
North Carolina inshore gillnet	2010–2014
Northeast sink gillnet	2010–2014
Southeast Atlantic gillnet	2010–2014
Trap/pot Fisheries	
Atlantic blue crab trap/pot	2010–2014
Atlantic mixed species trap/pot	2010–2014
Northeast/mid-Atlantic American lobster trap/pot	2010–2014
Pound Net/Weir/Seine Fisheries	
Mid-Atlantic haul/beach seine	2010–2014
Mid-Atlantic menhaden purse seine	2010–2014
U.S. mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	2010–2014
Virginia pound net	2010–2014

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis leading to the certification is set forth below.

NMFS has estimated that approximately 65,940 vessels participating in 19 fisheries listed in

Table 1 would be eligible to carry an observer if requested. However, NMFS would only request a fraction of the total number of participants to carry an observer based on the sampling protocol identified for each fishery by regional observer programs. As noted throughout this proposed rule, NMFS would select vessels and focus coverage in times and areas where fishing effort overlaps with sea turtle distribution. Due to the unpredictability of fishing effort, NMFS cannot determine the specific number of vessels that would be requested to carry an observer.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. The potential indirect costs to individual fishers are expected to be minimal because observer coverage would only be required for a small percentage of an individual vessel's total annual fishing time. In addition, 50 CFR 222.404(b) states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared.

The requirements to carry an observer when requested for those fisheries included on the 2010 AD through this final rule are included under an existing collection-of-information that was approved by the Office of Management and Budget (OMB) under OMB control number 0648–0593.

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

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement this observer requirement in 50 CFR part 222, subpart D. The EA concluded that implementing these regulations would not have a significant impact on the human environment. This fianl rule would not make any significant change in the management of fisheries included on the AD, and therefore, this final rule would not change the analysis or conclusion of the EA. If NMFS takes a management action, for example, requiring fishing gear modifications such as TEDs, NMFS would first prepare an environmental document as required under NEPA and specific to that action.

This final rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this final rule would not affect the conclusions of those opinions. Including fisheries on the AD is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse affects to listed species under the ESA.

This final rule would have no adverse impacts on sea turtles and may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles through information collected from observer programs.

Literature Cited

Murray, K.T. 2009. Characteristics and magnitude of sea turtle bycatch in US mid-Atlantic gillnet gear. Endangered Species Research 8:211–224.

National Marine Fisheries Service. 2009. Draft 2009 Marine Mammal Stock Assessment Reports for the Atlantic Ocean and Gulf of Mexico.

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Dated: May 11, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 090508900–91414–02]

RIN 0648–AX75

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Red Snapper Closure

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

ACTION: Temporary rule; interim measures extended.

SUMMARY: NMFS issues this temporary rule to extend the effective date of interim measures to reduce overfishing of red snapper in the South Atlantic implemented by a temporary rule published by NMFS on December 4, 2009 (74 FR 63673). This temporary rule extends the closure of the commercial and recreational fisheries for red snapper in the exclusive economic zone (EEZ) of the South Atlantic as requested by the South Atlantic Fishery Management Council (Council). The intended effect of this rule is to reduce overfishing of red snapper in the South Atlantic.

DATES: The effective date for the interim rule published at 74 FR 63673, December 4, 2009, is extended from June 3, 2010, through December 5, 2010, unless NMFS publishes a superseding document in the **Federal Register**.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) and environmental assessment (EA) may be obtained from Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Karla Gore, telephone: 727–551–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On December 4, 2009, NMFS published the final temporary rule (74 FR 63673) to implement measures to establish a closure of the commercial

and recreational fisheries for red snapper in the South Atlantic. The purpose of the interim measures and this extension of the rule is to reduce the overfishing of red snapper while long-term management measures are developed and implemented through Amendment 17A to the FMP. Amendment 17A, currently under development by the Council, will include management measures to end overfishing and rebuild the red snapper stock. Section 305(c)(2) of the Magnuson-Stevens Act provides the Council the authority to request interim measures, if necessary, to reduce overfishing. On March 23, 2009, the Council submitted a letter to NMFS requesting interim measures to prohibit the harvest and possession of red snapper in the South Atlantic. Section 305(c)(3)(B) of the Magnuson-Stevens Act allows for interim measures to be extended for one additional period of 186 days provided that the public has had an opportunity to comment on the interim measures and that the Council is actively preparing a plan amendment to address the overfishing on a permanent basis. A proposed temporary rule, published on July 6, 2009 (74 FR 31906), requested public comments on these same interim measures. NMFS responded to these comments in the final temporary rule published on December 4, 2009 (74 FR 63673), and they are not repeated here.

This rule extends, for an additional 186 days, a closure of the commercial and recreational fisheries for red snapper in the South Atlantic EEZ. During this closure, the harvest, possession, or sale of red snapper in or from the South Atlantic EEZ is prohibited for both commercial and recreational fishermen. For a person issued a valid commercial vessel permit or charter vessel/headboat permit for South Atlantic snapper-grouper, the provisions of this rule apply regardless of where the red snapper are harvested (i.e., state or Federal waters).

Classification

The Administrator, Southeast Region, NMFS, (RA) has determined that the interim measures this temporary rule extends are necessary for the conservation and management of the South Atlantic red snapper stock, until more permanent measures are implemented, and is consistent with the Magnuson-Stevens Act and other applicable laws. The Council is preparing Amendment 17A to establish long-term measures to end the overfishing of red snapper and rebuild the stock.

This temporary rule has been determined to be not significant for purposes of E.O. 12866.

This interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and comment.

An EA was prepared for the interim measures contained in the December 4, 2009, interim rule (74 FR 63673). Because the conditions that existed at the time the December 4, 2009, interim rule was implemented have not changed, the impacts of continuing the interim measures through this extension have already been considered. Copies of the EA are available from NMFS (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553 (b)(B) to waive prior notice and opportunity for public comment on this interim rule extension. This rule would continue interim measures implemented by the December 4, 2009, interim rule, for not more than an additional 186 days beyond the current expiration date of June 2, 2010. The conditions prompting the initial interim rule still remain, and more permanent measures to be completed through Amendment 17A have not yet been finalized. Failure to extend these interim measures, while the Council continues to develop more permanent measures in Amendment 17A, would result in additional overfishing of the red snapper stock, in violation of national standard 1 of the Magnuson-Stevens Act.

For the aforementioned reasons, the AA also finds good cause under 5 U.S.C. 553 (d)(3) to waive the 30-day delay in effectiveness of this rule.

Dated: May 12, 2010

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–11854 Filed 5–17–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 95
Tuesday, May 18, 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.

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AC62

Loan Policies and Operations; Loan Purchases From FDIC

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration is proposing to amend its rules on loan policies and operations. The amended rule would permit Farm Credit System (System) institutions with direct lending authority to purchase from the Federal Deposit Insurance Corporation (FDIC) loans to farmers, ranchers, producers or harvesters of aquatic products and cooperatives that meet eligibility and scope of financing requirements. This action would allow the System to provide liquidity and a stable source of funding and credit for borrowers in rural areas affected by the failure of their lending institution.

DATES: You may send comments on or before July 19, 2010.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. FCA requests that comments to the proposed amendment include the reference RIN 3052–AC62. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted but, for technical reasons, we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or
Mary Alice Donner, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

Background

Agriculture and rural sectors in the United States are adversely affected by bank failures and depressed local economies. Many commercial banks are active in agricultural and cooperative lending and, when they fail, farmers and ranchers and cooperatives can be left seeking new lenders to meet their ongoing credit needs. The Federal Deposit Insurance Corporation, Farm Credit System institutions, and others have asked whether System institutions, directly or in partnership with other market participants, could provide a source of credit and liquidity to borrowers whose operations are financed with agricultural or cooperative loans affected by commercial bank failures.[1]

When a bank fails and the FDIC is appointed receiver, the FDIC may sell the whole bank or its pieces (loans, deposits, or other assets).[2] When the FDIC sells bank assets it may sell agricultural or cooperative loans individually or in pools at auction. The System, as a Government-sponsored enterprise for agricultural lending, should have a role in providing credit to farmers and ranchers and cooperatives and liquidity to these rural areas by bidding on agricultural or cooperative loans, consistent with the safe and sound operation of System business.

FCA regulations currently provide that a System institution may not purchase an interest in a loan from a non-System institution except for the purpose of pooling and securitizing loans to sell to the Federal Agricultural Mortgage Corporation unless the interest is a participation interest.[3] As a result, the System is not able to buy loans from the FDIC. However, the Farm Credit Act of 1971, as amended (Act), does not prohibit System institutions from purchasing loans from the FDIC.[4] The FCA believes that allowing System institutions to purchase loans from the FDIC when a commercial bank lender carrying a portfolio of eligible agricultural or cooperative loans is closed and placed in receivership would further the public policy of the Act.

The proposed rule would create a regulatory framework for authorizing System institutions to purchase agricultural or cooperative loans of failed commercial banks from the FDIC.

[1] System institutions are federally chartered, cooperatively owned corporations authorized under titles I, II, and III of the Farm Credit Act of 1971, as amended (Act), to make long-term mortgage and short- and intermediate-term production loans to farmers, ranchers and agricultural producers, and, in the case of banks for cooperatives, to eligible cooperative associations. *See* 12 U.S.C. 2001 *et seq.*

[2] While a System institution could not qualify as a franchise purchaser, it could possibly pair with a non-System lender where that lender could buy the deposits and other loans leaving the System institution to buy the agricultural loans.

[3] 12 CFR 614.4325(b).

[4] The Act is silent as to specific authority of a System institution to buy loans from an entity such as the FDIC; however, section 1.5(5) of the Act gives Farm Credit Banks the authority to acquire, hold, dispose and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business (*see* section 2.2(5) and 2.12(5) for parallel authority with respect to Farm Credit associations); and section 1.5(15) of the Act gives Farm Credit Banks authority to buy and sell obligations of, or insured by the United States or any agency thereof (*see* section 2.2(11) and 2.12(17) for parallel authority with respect to Farm Credit associations). For parallel authorities with respect to banks for cooperatives, *see* section 3.1(5) and (13)(A) of the Act.

The System institution would be required to use due diligence to the extent allowed by the FDIC auction process to determine whether the loans purchased meet the eligibility and scope of financing requirements of the Act and FCA regulations.[5] All failed bank borrowers with agricultural loans purchased by a System institution would be entitled to certain "borrower rights."[6] Failed bank borrowers with agricultural or cooperative loans also would be offered membership status through a stock membership program developed by the System institution that meets the requirements of the System institution's bylaws and the Act.[7] Non-eligible loans and eligible loans to failed bank borrowers who chose not to become members would be divested. However, if distressed, those loans that were purchased by System institutions with titles I and II direct lending authority would be subject to borrower rights and would be restructured or foreclosed, whichever is least costly, as soon as financially feasible.

Analysis of the Proposed Rule

We propose to amend § 614.4325(b) to allow System institutions to purchase loans from the FDIC acting as receiver or in any other capacity under its statutory authority. The authority to purchase would be limited to loans that, with reasonable due diligence allowed through the FDIC auction process, the System institution determines eligibility and scope of financing requirements under titles I, II and III of the Act. After purchase, the System institution would be required to complete a more thorough due diligence to ensure that all of the loans meet eligibility and scope of financing requirements. System institutions would be urged to maintain prudent credit underwriting standards in purchasing loans from the FDIC. Funding bank approval would be required for acquisitions of loans from the FDIC exceeding 10 percent of the purchasing Farm Credit association's capital.

System institutions are particularly positioned to assist distressed borrowers through the borrower rights requirements of the Act. The proposed rule would provide that the borrower rights provisions of part 617 of the FCA regulations, except those with respect to effective interest rate disclosure, would apply to the failed bank borrowers to the same extent as they would have if the System institution had made the loan directly to the failed bank borrower. As such, the System institution would be able to restructure loans to some of the failed bank borrowers and these restructures would allow some of the borrowers to remain in production agriculture. Once purchased, the System institution would use all the rights contained in part 617 to work with the failed bank borrowers with agricultural loans to restructure the loan when it is the least cost alternative. These rights would include actions on applications, distressed loan restructuring, and rights of first refusal.[8] System institutions would not be expected to retroactively provide differential and effective interest rate disclosures associated with new loans; however, if a new System loan was made to a failed bank borrower, then those provisions, and all of part 617, would apply to that loan.

In addition to borrower rights, the rule would provide that the System institution give the failed bank borrowers whose loans meet eligibility and scope of financing requirements an opportunity to acquire stock of the institution under a program to be developed by each System institution, consistent with the System institution's bylaws and the requirements of the Act. A System institution would be required to divest the loan as soon as reasonably feasible if the failed bank borrower could not or would not participate in the membership program (non-participating failed bank borrower). If that loan was distressed, the non-participating failed bank borrower would be given all the borrower rights set forth in part 617, subparts A and D through G, during the divestiture period. The non-participating failed bank borrower would not be entitled to patronage, voting, or other shareholder rights under the FCA regulations or institution bylaws.

Because of the nature of the loan pools, it may be impossible to purchase a pool with loans solely within the purchasing institution's territory. Therefore, the proposed rule would allow any System institution to purchase loans from the FDIC regardless of whether the borrower's agricultural operation is located wholly or partially in the institution's chartered territory. However, we would expect System institutions to focus on serving farmers and ranchers' operations within their chartered territories, and an institution should carefully analyze whether it has the ability to adequately service a particular purchased loan to a borrower whose operations are located outside its chartered territory. If it does not have that ability, then the institution should consider partnering with the System institution located in the lending territory where the headquarters for the failed bank borrower is located. If it does have the ability to adequately service a loan or pool of loans outside of its chartered territory, a System institution would be permitted to purchase that loan or pool of loans provided notice is given to the System institution(s) chartered to serve the territory where the headquarters of the failed bank borrower is located. We propose to amend § 614.4070 by adding a new paragraph (d) that exempts territorial concurrence for loans or pools of loans purchased from the FDIC, if notice is provided to the System institution in whose chartered territory the headquarters of the failed bank borrower is located. Requiring territorial concurrence compliance on each purchase would impede a System institution's ability to bid on a pool of agricultural loans. However, this territorial concurrence exemption does not apply to any additional loans that may be made to the borrower.

Request for Comments on Proposed Rule

We invite comments on the proposed rule and will take all comments into consideration before issuing the final amendment to the FCA regulations on loan policies and operations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated

[5] Part 613, subpart A sets forth the eligibility requirements for financing bona fide farmers, ranchers and aquatic producers or harvesters under titles I and II. Part 613, subpart B sets forth eligibility requirements for cooperative financing under title III.

[6] This rule would require borrower rights to borrowers of loans purchased from the FDIC by System institutions with direct lending authority under titles I and II of the Act. Borrower rights would not be required to be given to borrowers of loans purchased from the FDIC by a bank for cooperatives. This is because section 4.14A(a)(6) of the Act excepts banks for cooperatives from borrower rights requirements.

[7] Section 4.3A(c)(1)(E) of the Act requires that as a condition of borrowing from or through the institution, any borrower who is entitled to hold voting stock or participation certificates shall, at the time a loan is made, acquire voting stock or participation certificates in an amount not less than $1,000 or 2 percent of the amount of the loan, whichever is less. Section 4.3A(c)(1)(D) of the Act provides that the bylaws of each bank and association shall provide for the issuance of voting stock which may only be held by borrowers who are farmers, ranchers or producers or harvesters of aquatic products, and eligible cooperative associations.

[8] 12 CFR part 617, subparts A and D through G. These "borrower rights" would not apply to loans to cooperatives. *See* footnote 6.

associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

Accordingly, for the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart B—Chartered Territories

2. Amend § 614.4070 by adding a new paragraph (d) to read as follows:

§ 614.4070 Loans and chartered territory—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

* * * * *

(d) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly or partially outside its chartered territory through the purchase of loans from the Federal Deposit Insurance Corporation in compliance with § 614.4325(b)(3), provided:

(1) Notice is given to the Farm Credit System institution(s) chartered to serve the territory where the headquarters of borrower's operation being financed is located; and

(2) After loan purchase, additional financing of eligible borrower operations complies with paragraphs (a), (b), and (c) of this section.

Subpart H—Loan Purchases and Sales

3. Amend § 614.4325 by revising paragraph (b) to read as follows:

§ 614.4325 Purchase and sale of interests in loans.

* * * * *

(b) *Authority to purchase and sell interests in loans.* Loans and interests in loans may only be sold in accordance with each institution's lending authorities, as set forth in subpart A of this part. No Farm Credit System institution may purchase any interest in a loan from an institution that is not a Farm Credit System institution, except:

(1) For the purpose of pooling and securitizing such loans under title VIII of the Act;

(2) Purchases of a participation interest that qualifies under the institution's lending authority, as set forth in subpart A of this part and meets the requirements of § 614.4330 of this subpart;

(3) Loans purchased from the Federal Deposit Insurance Corporation, provided that the Farm Credit System institution with direct lending authority under titles I, II, or III of the Act:

(i) Conducts reasonable due diligence prior to purchase, and conducts thorough review after purchase, to determine that the loan, or pool of loans, qualifies under the institution's lending authority as set forth in subpart A of this part, and meets scope of financing and eligibility requirements in subpart A or subpart B of part 613;

(ii) Obtains funding bank approval, if a Farm Credit System association, for loans or pools of loans purchased exceeding 10 percent of total capital;

(iii) Establishes a program whereby each eligible borrower of the loan purchased is offered an opportunity to acquire the institution's required minimum amount of voting stock;

(iv) Determines whether each loan purchased, except for loans purchased that could be financed only by a bank for cooperatives under title III of the Act, is a distressed loan as defined in § 617.7000, and provides the borrower of the purchased loan the rights afforded in § 617.7000, subparts A, and D through G if the loan is distressed regardless of whether the loan is to an eligible or ineligible borrower; and

(v) Divests itself of ineligible loans purchased that are not distressed loans as defined in § 617.7000 and purchased loans of borrowers who elect not to acquire stock under the program offered in paragraph (b)(3)(iii) of this section in the same manner it would divest, under its current business practices, a loan in its loan portfolio determined to be ineligible.

* * * * *

Dated: May 12, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–11772 Filed 5–17–10; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM428; Notice No. 25–99–11–SC]

Special Conditions: Boeing 747–468, Installation of a Medical Lift

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing 747–468 airplane. This airplane, as modified by Jet Aviation, will have a novel or unusual design feature associated with the installation of a medical lift. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by June 17, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM428, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM428. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2194; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

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

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

Background

On March 2, 2007, Jet Aviation Engineering Services L.P. (JAES), of Teterboro, New Jersey, applied for a supplemental type certificate for a reconfiguration of an aircraft interior in a 747–468. The Boeing Model 747–468 airplane is FAA approved under Type Certificate A20WE as a large transport-category airplane that is limited to 660 passengers or fewer, depending on the interior configuration.

This modification includes the installation of a medical lift between the main deck and upper deck. The lift allows the transport of a single occupant between the decks during cruise or ramp operations. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, JAES must show that the 747–468, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A20WE, or of the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type-certification basis." The regulations incorporated by reference in Type Certificate A20WE are as follows:

- Part 36, as amended by Amendments 36–1 through 36–15, and any later amendments in existence at the time of certification.
- Special Federal Aviation Regulation (SFAR) 27, as amended by Amendments 27–1 through 27–6 and any later amendments in existence at the time of type certification.
- Part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–59, and the part 25 section-number exceptions itemized in Type Certificate A20WE.

The following special conditions, exemptions, and equivalent safety findings, which are part of the Model 747–300 certification basis, are also part of the certification basis for the Model 747–400.

The special conditions include those enclosed with an FAA letter to The Boeing Company dated February 20, 1970, and the following:

1. Special Condition 4A, revised to apply to airplanes with the landing-gear load-evener system deleted, was recorded as an enclosure to an FAA letter to The Boeing Company dated May 12, 1971.
2. Special Condition No. 25–61–NW–1, for occupancy not to exceed 32 passengers on the upper deck of airplanes with a spiral staircase, was transmitted to The Boeing Company by FAA letter dated February 26, 1975.
3. Special Condition No. 25–71–NW–3, for occupancy not to exceed 45 passengers on the upper deck of airplanes with a straight-segmented stairway, was transmitted to The Boeing Company by FAA letter dated September 8, 1976.
4. Modification of Special Condition No. 25–71–NW–3, for occupancy not to exceed 110 passengers on the upper deck of airplanes with a straight-segmented stairway, was transmitted to The Boeing Company by FAA letter dated August 3, 1981.
5. Special Condition No. 25–77–NW–4, modification of the autopilot system to approve the airplane for use of the system under Category IIIb landing conditions, was transmitted to The Boeing Company by FAA letter dated July 8, 1977.
6. Special Condition No. 25–ANM–16, for use of an overhead crew-rest area, occupancy not to exceed ten crewmembers, was transmitted to The Boeing Company by FAA letter dated November 19, 1987. The FAA-approved procedures required for compliance with paragraph 13 of the special condition are located in Boeing Document D926U303, Appendix D.
7. Special Condition No. 25–ANM–24, applicable to flight-deck displays and propulsion-control systems, was provided to Boeing on December 22, 1988.
8. Special Condition No. 25–ANM–25, which established lightning-and radio-frequency-energy protection requirements, was provided to Boeing on December 22, 1988.

Exemptions From Part 25

Exemption no. 1013A, dated December 24, 1969: Exemption from Section 25.471(b) to allow lateral displacement of the center of gravity from the airplane centerline.

The following optional requirements, which are part of the Model 747–300 certification basis, apply also to the 747–400:

Requirement	Section
Ditching provisions	25.801
Ice-protection provisions	25.1419

The following equivalent-safety findings, previously made for earlier models under the provisions of § 21.21(b)(1), are also applicable to the Model 747–400:

Requirement	Section
Width of aisle	25.815.
Pilot-compartment view	25.773.
Use of 1-g stall speed (nonstructural items)	Several (747–400 only).
Use of 1-g stall speed (structural items)	Several (747–400 only).
Position-light distribution and intensities	25.1389(b)(3) (747–400 only).
Fire-detection system	25.1203 (See Note 1).
Pressure relief	25.1103(d) (See Note 1).
Emergency-locator transmitter (ELT)	25.1415(d).

Requirement	Section
Emergency-exit marking	25.811(f).

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747–468 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 747–468 must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The original aircraft configuration included a straight stairway between the main deck and upper deck at FS 870. The stairway is relocated in the new configuration, and the existing stairway is replaced with an electrically powered medical lift using the opening in the upper deck formerly occupied by the stairs. When the lift is not in operation, the upper-deck opening is covered by floor panels. These floor panels are opened up prior to operation of the lift and form a protective fencing around the upper-deck opening.

The purpose of the medical lift is to move an occupant between the master lounge in the upper deck and the medical room on the lower deck.

The lift platform is driven by two redundant electrical motors, mounted to the rear wall, between the struts. A lifting gear-drive with shafts and gear boxes is powered on the front and rear of the lift platform. The spindles are supported at the lifting gear on the lower support structure and with a strut support on the upper deck. The lift platform is guided in lateral directions with the guiding rails mounted on the struts.

Discussion

Due to the novel or unusual features associated with the installation of this medical lift, the following special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type-certificate.

Applicability

As discussed above, these special conditions are applicable to the 747–468. Should JAES apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A20WE, to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type-certification basis for Boeing 747–468 airplanes modified by JAES.

1. A functional verification must be conducted to ensure the adequacy of the lift design features that are supposed to prevent injury to the lift occupant, lift operator, and lift observer.

2. The occupied lift must be designed to withstand the non-emergency load conditions imposed by the aircraft according to loads report SIE–327–301, revision D.

3. Occupancy or operation of the lift must not be permitted during taxi, takeoff, landing (TTL), or turbulent conditions.

4. The lift must be stowed for TTL. The stowed position requires the lift platform positioned at the main-deck level with the floor panels closed.

5. A portable oxygen bottle must be present in the lift and easily accessible to the occupant.

6. Occupancy of the lift must be limited to a single occupant secured in one of two possible configurations:

a. The occupant must be secured to a medical stretcher that is attached to the lift platform. The occupied stretcher must be designed to withstand the non-emergency load conditions defined in loads report SIE–327–301, revision D.

b. The occupant must be secured to a wheelchair that is attached to the lift platform.

7. Control panels must be located on both main and upper decks, connected with full duplex audio communications. On both operator control units, an emergency shut-off switch must be installed. In an emergency, this switch must immediately interrupt the main power supply to the motors. Lift operation must be stopped until the emergency shut-off switch is reset. As soon as one of the operators commands operation in a direction, the “Up” and “Down” option buttons must be disabled and the stop button enabled. Before one of the operators is able to change the lift-travel direction again, the lift must first be stopped.

8. Lift operation must require a trained operator at the main-deck control panel and a trained observer at the upper-deck control panel.

9. Sensors must be installed to detect the following conditions, and to prevent the start or continuation of lift travel if any conditions are not met:

a. Upper-deck seat, located on the left side of the aircraft and just forward of the master-bath bulkhead, is in its most forward, outboard position.

b. Upper-deck master-bedroom/lavatory port bulkhead is opened and secured.

c. Upper-deck shower door is closed and secured.

d. Upper-deck master-lavatory door is opened and secured.

e. Upper-deck floor panels are opened and configured to form the protective fencing.

f. Main-deck inboard doors are closed and secured. The doors must be lockable only from the outside of the lift. This ensures that the operator has control of this area and that nobody is located under the lift.

g. Aircraft seat-belt-fasten signs must not be illuminated.

10. Sensors must be installed to detect the following conditions during

operation, and to prevent continued lift travel if any of these conditions occur:

a. Over-temperature of lift motors and/or power-frequency converter.

b. Presence of smoke at motors and in electrical-control cabinet.

c. Over-current at the lift motors.

d. Asynchronous operation of the spindles.

11. A built-in fire extinguisher must be installed in the motor and electrical-control cabinet. This fire extinguisher must be designed to discharge automatically upon the occurrence of a fire.

12. The lift must have the provision for manual operation in the event of a malfunction such as a loss of power to the lift and/or associated systems.

13. A separate battery backup system must provide lighting for the lift-control system, lift control/sensors, communication system, and lift lights for a minimum of 10 minutes in the event of loss of power to the lift and/or associated systems.

14. Lift placards must be installed near or adjacent the control panels identified in special condition 7. The placards must be stated as follows:

a. THIS LIFT IS APPROVED FOR MOVING ONLY A SINGLE OCCUPANT BETWEEN THE MAIN AND UPPER DECKS AND ONLY WHEN SECURED TO EITHER AN APPROVED MEDICAL STRETCHER OR WHEELCHAIR. NO OTHER USES OF THIS LIFT ARE APPROVED.

b. DO NOT OPERATE LIFT DURING TAXI, TAKEOFF, LANDING, OR TURBULENCE.

c. AN APPROVED MEDICAL STRETCHER OR WHEELCHAIR MUST BE PROPERLY SECURED TO THE LIFT PLATFORM BEFORE OPERATING THIS LIFT.

d. THE LIFT MUST BE STOWED FOR TAXI, TAKEOFF, AND LANDING. THE STOWED POSITION REQUIRES THE LIFT PLATFORM POSITIONED AT THE MAIN–DECK LEVEL WITH THE FLOOR PANELS CLOSED.

15. Instructions on how to:

a. Configure the lift for operation.

b. Operate the lift.

c. Stow the lift for non-operation such as during TTL and turbulence.

d. Operate the mechanical-override features in the event of a malfunction such as a loss of power to the lift and/or associated systems.

16. Training and related manuals must include:

a. Limitations and procedures for normal lift operation.

b. Backup and override procedure for evacuating the lift and returning it to TTL configuration.

17. Special conditions nos. 3. 4, and 14 must be documented in the Limitations section of the AFM.

Issued in Renton, Washington, on May 12, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11828 Filed 5–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0515; Directorate Identifier 2009–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> Several cases have been reported of cracks in the joint extrusions securing the outer bondment to the acoustic panel of the nacelle transcowl assemblies. Although there is no effect on flight safety (thrust reverser stowed), thrust reverser deployment under rejected take-off or emergency landing load conditions could potentially result in acoustic panel failure and possible runway debris.
>
> * * * * *

The loss of an acoustic panel during rejected take-off or emergency landing load conditions could leave debris on the runway. This debris, if not removed, creates an unsafe condition for other airplanes during take-off or landing, as those airplanes could impact debris on the runway and sustain damage. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 2, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0515; Directorate Identifier 2009–NM–196–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–33, dated July 28, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Several cases have been reported of cracks in the joint extrusions securing the outer bondment to the acoustic panel of the nacelle transcowl assemblies. Although there is no effect on flight safety (thrust reverser stowed), thrust reverser deployment under rejected take-off or emergency landing load conditions could potentially result in acoustic panel failure and possible runway debris.
>
> This directive mandates inspection, repair (if necessary) and reinforcement of the transcowl assemblies.

The loss of an acoustic panel during rejected take-off or emergency landing load conditions could leave debris on the runway. This debris, if not removed, creates an unsafe condition for other airplanes during take-off or landing, as those airplanes could impact debris on the runway and sustain damage. The inspection is a detailed visual inspection of the outboard edge of the transcowl joint extrusion for evidence of cracking. The repair consists of doing an eddy current or liquid penetrant inspection for cracking, and depending on the results, either removing the affected joint extrusion area and replacing with packers, or contacting Bombardier for repair instructions and doing the repair. The reinforcement of the transcowl assemblies includes installing new support channels. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA–78–008, Revision A, dated July 10, 2009; and Task 05–51–27–210–801 of Part 2, Volume 1, of the Bombardier CRJ Series Regional Jet Aircraft Maintenance Manual (AMM), CSP B–001, Revision 28, dated January 20, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 361 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $245,480, or $680 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2010–0515; Directorate Identifier 2009–NM–196–AD.

Comments Due Date

(a) We must receive comments by July 2, 2010.

Affected ADs

(b) None.

Applicability

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

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10265 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15192 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 78: Engine exhaust.

Reason

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

Several cases have been reported of cracks in the joint extrusions securing the outer bondment to the acoustic panel of the nacelle transcowl assemblies. Although there is no effect on flight safety (thrust reverser stowed), thrust reverser deployment under rejected take-off or emergency landing load conditions could potentially result in acoustic panel failure and possible runway debris.

* * * * *

The loss of an acoustic panel during rejected take-off or emergency landing load conditions could leave debris on the runway. This debris, if not removed, creates an unsafe condition for other airplanes during take-off or landing, as those airplanes could impact debris on the runway and sustain damage.

Actions and Compliance

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

(1) Within 5,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, inspect for the part number and serial number of each transcowl assembly, and, as applicable, the repair status of each transcowl assembly.

(i) If all transcowl assemblies installed on any airplane applicable to this AD meet one of the conditions as listed in paragraph (f)(1)(i)(A), (f)(1)(i)(B), or (f)(1)(i)(C) of this AD, no further action is required by this AD.

(A) Part number (P/N) KCN624–2003–3, –5, or –7.

(B) P/Ns CN624–2001–XXX or KCN624–2001–X (XXX and X mean various dash numbers), with serial number (S/N) SB0965 or higher.

(C) P/Ns CN624–2001–XXX or KCN624–2001–X (XXX and X mean various dash numbers), and repaired in accordance with one of the Bombardier repair engineering orders (REOs) listed in paragraph 1.D of Bombardier Service Bulletin 670BA–78–008, Revision A, dated July 10, 2009.

(ii) If one or more of the transcowl assemblies have P/N CN624–2001–XXX or KCN624–2001–X (XXX and X mean various dash numbers), with S/N SB0964 or lower, and have not been repaired in accordance with one of the Bombardier REOs listed in paragraph 1.D of Bombardier Service Bulletin 670BA–78–008, Revision A, dated July 10, 2009, do the actions specified in paragraph (f)(3) of this AD.

(2) As of the effective date of this AD, following any high-energy stop or rejected take-off (RTO), perform a detailed visual inspection of each transcowl assembly (left, right, upper, and lower) before further flight, in accordance with Task 05–51–27–210–801 of Part 2, Volume 1, of the Bombardier CRJ Series Regional Jet Aircraft Maintenance Manual (AMM), CSP B–001, Revision 28, dated January 20, 2009. If any crack is found on one or more transcowl assemblies, before further flight, repair and reinforce the cracked part(s) in accordance with paragraph (f)(3) of this AD. Doing the requirements of paragraph (f)(3) of this AD terminates the requirements of paragraph (f)(2) of this AD.

(3) Except as required by paragraph (f)(2) of this AD, within 5,000 flight hours or 24 months after the effective date of this AD, whichever comes first, do a detailed visual inspection for cracking on each transcowl, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–78–008, Revision A, dated July 10, 2009. If any cracking of the joint extrusion is found, before further flight, repair and reinforce the joint extrusion on each transcowl, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–78–008, Revision A, dated July 10, 2009. If no cracking is found, before further flight, reinforce the joint extrusion on each transcowl, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–78–008, Revision A, dated July 10, 2009. Accomplishment of the actions specified in this paragraph terminate the requirements of paragraphs (f)(1)(ii) and (f)(2) of this AD.

(4) Inspections, repairs, and reinforcement of the joint extrusion on each transcowl is also acceptable for compliance with the requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with Bombardier Service Bulletin 670BA–78–008, dated September 19, 2008.

(5) After accomplishing the inspection required by paragraph (f)(1) of this AD, no replacement or spare transcowl assembly having P/N CN624–2001–XXX or KCN624–2001–X (XXX and X mean various dash numbers), with S/N SB0964 or lower, may be installed on any airplane unless the transcowl assembly has been repaired in accordance with one of the Bombardier REOs listed in paragraph 1.D of Bombardier Service Bulletin 670BA–78–008, Revision A, dated July 10, 2009.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, 1600 Stewart Avenue, Suite 40, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–33, dated July 28, 2009; Bombardier Service Bulletin 670BA–78–008, Revision A, dated July 10, 2009; and Task 05–51–27–210–801 of Part 2, Volume 1, of the Bombardier CRJ Series Regional Jet Aircraft Maintenance Manual, CSP B–001, Revision 28, dated January 20, 2009; for related information.

Issued in Renton, Washington, on May 7, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11889 Filed 5–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0516; Directorate Identifier 2009–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

When preparing for landing, the flight crew of a F28 Mark 0100 (Fokker 100) aeroplane observed a main landing gear (MLG) unsafe indication after landing gear down selection. * * * [T]he right (RH) MLG was partly extended and the left (LH) MLG door was open but without the MLG being extended. * * *

Subsequent investigation revealed that the cause of the MLG extension problem was the (partially) blocked hydraulic return line from the MLG selector valve by pieces of hard plastic. These were identified as parts of the poppet seat of PBSOV [parking brake shut-off valve] Part Number (P/N) 70379. * * *

This condition, if not detected and corrected, could lead to further events where the MLG fails to extend, possibly resulting in loss of control of the aeroplane during landing.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 2, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0516; Directorate Identifier 2009–NM–251–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0220, dated October 14, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

When preparing for landing, the flight crew of a F28 Mark 0100 (Fokker 100) aeroplane observed a main landing gear (MLG) unsafe indication after landing gear down selection. The approach was aborted and the landing gear unsafe procedure was accomplished. As this did not produce the desired effect, a low pass was performed and the control tower confirmed that the right (RH) MLG was partly extended and the left (LH) MLG door was open but without the MLG being extended. Eventually the aeroplane landed with partly extended landing gear, without resulting in serious injuries to the occupants.

Subsequent investigation revealed that the cause of the MLG extension problem was the (partially) blocked hydraulic return line from the MLG selector valve by pieces of hard plastic. These were identified as parts of the poppet seat of PBSOV [parking brake shut-off valve] Part Number (P/N) 70379. The PBSOV installed on the incident aeroplane was a modified version of P/N 70379, identified by suffix "A" behind the serial number on the identification plate. This modification was introduced by Eaton, the valve manufacturer, with Eaton Service Bulletin (SB) 70379–32–01 and includes replacement of the original poppet with clamped hard plastic seat by an improved poppet assembly with screwed-on seat. When the affected valve was opened, it was confirmed that it contained the improved poppet assembly. The poppet seat fragments found in the return system therefore originated from a previously installed (pre SB 70379–32–01) P/N 70379 PBSOV and must have been present in the return/pressure line prior to installation of the modified PBSOV.

This condition, if not detected and corrected, could lead to further events where the MLG fails to extend, possibly resulting in loss of control of the aeroplane during landing.

For the reasons described above, this AD requires the [detailed] inspection of the associated hydraulic lines, irrespective what type PBSOV is installed, removal of contamination in the system, if any, and replacement of each unmodified PBSOV with a modified unit. This AD also prohibits, after installation of a modified PBSOV on an aeroplane, re-installation of an unmodified PBSOV on that aeroplane.

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

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–32–159, dated October 6, 2009. Eaton Aerospace has issued Service Bulletin 70379–32–01, dated September 15, 2001. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 6 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,040, or $340 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2010–0516; Directorate Identifier 2009–NM–251–AD.

Comments Due Date

(a) We must receive comments by July 2, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

When preparing for landing, the flight crew of a F28 Mark 0100 (Fokker 100) aeroplane observed a main landing gear (MLG) unsafe indication after landing gear down selection. * * * [T]he right (RH) MLG was partly extended and the left (LH) MLG door was open but without the MLG being extended. * * *

Subsequent investigation revealed that the cause of the MLG extension problem was the (partially) blocked hydraulic return line from the MLG selector valve by pieces of hard plastic. These were identified as parts of the poppet seat of PBSOV [parking brake shut-off valve] Part Number (P/N) 70379. * * *

This condition, if not detected and corrected, could lead to further events where the MLG fails to extend, possibly resulting in loss of control of the aeroplane during landing.

* * * * *

Compliance

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

Actions

(g) Do the following actions.

(1) Within 30 days after the effective date of this AD, do a detailed inspection of the hydraulic lines associated with the PBSOV for contamination in the system (the presence of pieces of material from the poppet seat of an unmodified PBSOV having P/N 70379). If any contamination is found, before further flight, remove the contamination, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–159, dated October 6, 2009.

(2) Within 18 months after the effective date of this AD, re-inspect the hydraulic lines and do all applicable corrective actions as required by paragraph (g)(1) of this AD, and replace the unmodified PBSOV having P/N 70379, with a modified PBSOV having P/N 70379 having the suffix "A" behind the serial number on the identification plate, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–159, dated October 6, 2009.

(3) After accomplishing paragraph (g)(2) of this AD, do not install any unmodified

PBSOV having P/N 70379, unless the PBSOV having P/N 70379 has been modified, having the suffix "A" behind the serial number on the identification plate, in accordance with the Accomplishment Instructions of Eaton Service Bulletin 70379–32–01, dated September 15, 2001.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0220, dated October 14, 2009; Fokker Service Bulletin SBF100–32–159, dated October 6, 2009; and Eaton Service Bulletin 70379–32–01, dated September 15, 2001; for related information.

Issued in Renton, Washington, on May 7, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11890 Filed 5–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0386; Airspace Docket No. 10–AWA–1]

RIN 2120–AA66

Proposed Revocation of Class C Airspace, Proposed Establishment of Class D Airspace, and Proposed Modification of Class E Airspace; Columbus, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke the Columbus, GA, Class C airspace area; establish Class D airspace area to replace the Class C airspace area; and amend the existing Class E surface area and 700-foot Class E airspace at Columbus, GA. The FAA is proposing this action because Columbus Metropolitan Airport no longer meets the criteria required to qualify for a Class C airspace designation. Reconfiguring the area would enhance safety and facilitate more efficient use of airspace within the National Airspace System.

DATES: Comments must be received on or before July 19, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2010–0386 and Airspace Docket No. 10–AWA–1, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking 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 (FAA Docket No. FAA–2010–0386 and Airspace Docket No. 10–AWA–1) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA–2010–0386 and Airspace Docket No. 10–AWA–1." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. 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 through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/regulations_policies/rulemaking/recently_published/.*

You may review the public docket containing the proposal, 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 Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Class C airspace areas are designed to improve air safety by reducing the risk of midair collisions in high volume airport terminal areas and enhance the management of air traffic operations in that area. In order for an airport to be considered for designation of Class C airspace, it must meet the following criteria:

1. The airport must be served by an operational airport traffic control tower (ATCT) and a radar approach control; and

2. One of the following applies:

(a) An annual instrument operations count of 75,000 at the primary airport; or

(b) An annual count of 250,000 enplaned passengers at the primary airport.

Both instrument operations and passenger enplanements at Columbus Metropolitan Airport have declined significantly in recent years. Passenger enplanement figures for calendar year 2008 (the most recent validated figures available) totaled 51,288. Instrument operations for calendar year 2008 were 22,795. These totals are significantly below the above stated thresholds for Class C airspace designation.

On February 3, 2010, an informal airspace meeting was held at the Columbus Metropolitan Airport to describe the proposed airspace changes and to seek facts and information regarding the proposal. Approximately 24 persons attended the meeting. No objections to the proposal were expressed at the meeting.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to remove the Columbus Metropolitan Airport Class C airspace area. The FAA is further proposing to establish a Class D airspace area to replace the Class C airspace area. The proposed Class D airspace area would be designated as part-time and would be in effect during the Columbus ATCT hours of operation as published in the Airport/Facility Directory. During periods when the ATCT is closed, the Class D airspace area would revert to a Class E surface area as is currently the case at the airport. This action would also change the dimensions of the existing Class E surface area by reducing the radius of the area from a 5-nautical mile (NM) radius to a 4.4–NM radius to match the dimensions of the new Class D airspace area. In addition, this action would amend part of the description of the existing Columbus, GA, Class E airspace that extends upward from 700-feet above the surface by changing the radius of the area around the Columbus Metropolitan Airport from the current 10–NM radius to a 6.8–NM radius.

Class C airspace areas, Class D airspace areas, Class E surface areas and Class E airspace, extending upward from 700-feet above the surface, are published in paragraphs 4000, 5000, 6002, and 6005, respectively, of FAA Order 7400.9T, dated August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class C, D and E airspace area amendments proposed 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. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends terminal airspace as required to preserve the safe and efficient flow of air traffic in the Columbus, GA area.

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 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 4000 Subpart C—Class C Airspace.

* * * * *

ASO GA C Columbus Metropolitan Airport, GA [Removed]

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Columbus, GA [New]

Columbus Metropolitan Airport, GA
(Lat. 32°30′59″ N., long. 84°56′20″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.4-mile radius of the Columbus Metropolitan Airport; and that airspace within 1 mile each side of the 234° bearing from the airport extending from the 4.4-mile radius to 5 miles south of the airport. This Class D airspace is effective during the specific days 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 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO–GA E2 Columbus Metropolitan Airport, GA [Amended]

Columbus Metropolitan Airport
(Lat. 32°30′59″ N., long. 84°56′20″ W.)

Within a 4.4-mile radius of Columbus Metropolitan Airport; and that airspace within 1 mile each side of the 234° bearing from the airport, extending from the 4.4-mile radius to 5 miles south of the airport. This Class E airspace area is effective during the 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 Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Columbus, GA [Amended]

Columbus Metropolitan Airport, GA
(Lat. 32°30′59″ N., long. 84°56′20″ W.)
Lawson AAF, GA
(Lat. 32°20′14″ N., long. 84°59′29″ W.)
Lawson VOR/DME
(Lat. 32°19′57″ N., long. 84°59′36″ W.)
Lawson LOC
(Lat. 32°20′43″ N., long. 84°59′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Columbus Metropolitan Airport; and within 1 mile each side of the 234° bearing from the airport extending from the 6.8-mile radius to 7.3-miles south of the airport; and within a 7.6-mile radius of Lawson AAF; and within 2.5 miles each side of Lawson VOR/DME 340° radial extending from the 7.6-mile radius to 15 miles north of the VOR/DME; and within 4 miles each side of the Lawson LOC 145° course extending from the 7.6-mile radius to 10.6 miles southeast of Lawson AAF.

Issued in Washington, DC, on May 7, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–11851 Filed 5–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1140

[Docket No. FDA–2010–N–0136]

RIN 0910–AG33

Request for Comment on Implementation of the Family Smoking Prevention and Tobacco Control Act; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending for 60 days the comment period for the advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of March 19, 2010. In the ANPRM, FDA requested comments, data, research, or other information on the regulation of outdoor advertising of cigarettes and smokeless tobacco. The agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: The comment period for the advance notice of proposed rulemaking, published March 19, 2010, at 75 FR 13241, is extended. Submit electronic or written comments by July 19, 2010.

ADDRESSES: You may submit comments, identified by Docket No FDA–2010–N–0136 and/or RIN number 0910–AG33, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Annette Marthaler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 1–877–287–1373, *annette.marthaler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 19, 2010 (75 FR 13241), FDA published an ANPRM with a 60-day comment period to request data, research, information, and comments on whether restrictions on outdoor advertising of tobacco products are necessary to protect children and adolescents from the harms caused by tobacco use and, if they are, whether the restrictions under consideration (as identified in the ANPRM), or close variations would be justified, lawful, and appropriate. FDA also solicited data, research, information, and comments on other restrictions on outdoor advertising that, either in addition to or instead of the specific restrictions under consideration, would advance the public health goal of protecting children and adolescents from the harms caused by tobacco use.

The agency has received a request for a 90-day extension of the comment period for the ANPRM. The request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful response to the ANPRM.

FDA has considered the request and is extending the comment period for the ANPRM for 60 days, until July 19, 2010. The agency believes that a 60-day extension allows adequate time for interested persons to submit comments without significantly delaying a rulemaking on this important issue.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. it is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 13, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–11799 Filed 5–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 220

[Docket No. FRA–2009–0118]

RIN 2130–AC21

Restrictions on Railroad Operating Employees' Use of Cellular Telephones and Other Electronic Devices

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend its railroad communications regulations by restricting use of mobile telephones and

other distracting electronic devices by railroad operating employees. This proposed rulemaking would codify most of the requirements of FRA Emergency Order No. 26, which would be supplanted by the final rule. FRA proposes that some of the substantive requirements of that order as well as its scope be changed by this rulemaking to accommodate changes previously recommended by a petition for review of that order and a number of additional amendments that FRA believes are appropriate. In addition, FRA is requesting comment regarding whether violations of this proposed subpart should be a basis for revoking a locomotive engineer's certification.

DATES: Written comments must be received by June 17, 2010. Comments received after that date will be considered to the extent possible without incurring additional delay or expense. FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However if FRA receives a specific request for a public, oral hearing prior to June 17, 2010, one will be scheduled, and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to this Docket No. FRA–2009–0118 may be submitted by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.Regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, West Building, 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.
- *Fax:* 202–493–225.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Please note that all comments received will be posted without change to *http://www.Regulations.gov,* including any personal information provided. Please *see* the discussion under the Privacy Act heading in the Supplementary Information section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.Regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building, 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.

FOR FURTHER INFORMATION CONTACT: Douglas H. Taylor, Staff Director-Operating Practices, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6255); Ann M. Landis, Trial Attorney, Office of the Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20950 (telephone: (202) 493–6064); or Joseph St. Peter, Trial Attorney, Office of the Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20950 (telephone: (202) 493–6047).

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I. Distracted Driving and Its Transportation Safety Consequences

A. Background Information

The increasing number of distractions for drivers has led to increasing safety risks. The distractions caused by cell phones (mobile phones/cellular phones) have been a concern for years. In addition, each day, drivers are distracted by eating, conversations with passengers, using portable electronic devices, or some other type of multitasking. This type of behavior results in vehicle accidents and significant costs to our nation's economy.

In response to this growing problem, DOT hosted a Distracted Driving Summit in Washington, DC (*http://www.distraction.gov/dot/*). At the Summit, DOT brought together safety and law enforcement experts as well as young adults whose distracted driving had tragic consequences. Attendees heard the testimony of families who lost loved ones because someone else had chosen to send a text message, dial a phone, or become occupied with another activity while driving. In addition to hosting the Summit, DOT has reviewed recent research and has decided to take a more systematic look at the issue and its many dimensions.

B. Justification for the Rulemaking

FRA has discovered numerous examples proving the danger of distracting electronic devices. These examples indicate the necessity of restrictions on the use of such electronic devices. Five of these accidents are described below, though all of these and more can be found in the full text of the Order.

1. On June 8, 2008, a Union Pacific Railroad Company (UP) brakeman was struck and killed by the train to which he was assigned. FRA's investigation indicated that the brakeman instructed the locomotive engineer via radio to back the train up and that the brakeman subsequently walked across the track, into the path of the moving train. The brakeman was talking on his cell phone at the time of the accident.

2. On July 1, 2006, a northward BNSF Railway Company (BNSF) freight train collided with the rear of a standing BNSF freight train at Marshall, Texas. Although there were no injuries, there were estimated damages of $413,194.

Both trains had two-person crews. The striking train had passed a "Stop and Proceed at Restricted Speed" signal indication and was moving at 20 mph. FRA determined that the collision was caused by the failure of the locomotive engineer on the striking train to comply with restricted speed and that he was engaged in cell phone conversations immediately prior to the accident.

3. On December 21, 2005, a contractor working on property of The Kansas City Southern Railway Company at Copeville, Texas was struck and killed when he stepped into the path of an approaching freight train. FRA's investigation disclosed that the contractor was talking on a cell phone at the time of the accident.

4. One locomotive engineer died and a train conductor suffered serious burns when two BNSF freight trains collided head-on near Gunter, Texas on May 19, 2004. The collision resulted in the derailment of 5 locomotives and 28 cars, with damages estimated at $2,615,016. Approximately 3,000 gallons of diesel fuel were released from the locomotives, which resulted in a fire. NTSB investigators obtained records that showed the number and duration of cell phone calls made by crewmembers on both trains between 1:50 p.m. and the time of the accident, approximately 5:46 p.m. During this time, a total of 22 personal cell phone calls were made and/or received by the five crewmembers on both trains while the trains were in motion.

5. At 8:57 a.m. on May 28, 2002, an eastbound BNSF coal train collided head on with a westbound BNSF intermodal train near Clarendon, Texas. The conductor and engineer of the coal train received critical injuries. The engineer of the intermodal train was killed. The cost of the damages exceeded $8,000,000. The NTSB found that all four crewmembers involved in this accident had personal cell phones. It also found that the use of a cell phone by the engineer of one of the trains may have distracted him to the extent that he was unaware of the dispatcher's instructions that he stop his train at a designated point.

On October 1, 2008, FRA issued Emergency Order No. 26 (Order or EO 26) restricting the on-duty use of cellular telephones and other electronic devices. 73 FR 58702, Oct. 7, 2008). This FRA action was in part a response to the accidents discussed above and in part a response to the September 12, 2008 head-on collision between a Southern California Regional Rail Authority (Metrolink) commuter train and a UP freight train in Chatsworth, California. This accident resulted in 25 deaths, numerous injuries, and more than $7 million in damages. Information discovered during the NTSB investigation indicates that the locomotive engineer of the Metrolink commuter train passed a stop signal. NTSB stated that a cell phone owned by the commuter train engineer was being used to send a text message within 30 seconds of the time of the accident.

In the period from the effective date of the Order, October 27, 2008, through December 7, 2009, FRA inspectors discovered approximately 200 instances in which the Order may have been violated. FRA's Office of Railroad Safety recommended enforcement action against the employee or railroad in 36 of these instances. All 36 of these actions were based on a railroad employee's using an electronic device, failing to have its earpiece removed from the employee's ear, or failing to have the device turned off in a potentially unsafe situation. Of these 36 instances, approximately half of them involved an employee using or failing to have a cell phone turned off while in the cab of a locomotive during a potentially hazardous time. In addition, 33 of the incidents recommended for enforcement action involved personal, as opposed to railroad-supplied, devices. The hazard of distracting electronic devices has been made abundantly and, at times, tragically clear. FRA inspectors have noticed a decrease in the unsafe use of electronic devices within locomotive cabs since the Order became effective, but the problem still exists.

FRA has considered the costs and benefits of this proposed rule. Relative to the current requirements of EO 26, the only additional burden produced by the requirements of this proposed rule is that related to revising programs and initial training focused on the exceptions that this proposal would introduce. This added burden would total approximately $286,000. The exceptions to the existing restrictions on the use of electronic devices would allow for greater flexibility with respect to the use of certain electronic devices while maintaining the safety benefits intended. Thus, when compared to the existing requirements, the added flexibility would justify the relatively minor cost burden. In an effort to also evaluate the requirements that would be transferred from EO 26 to Part 220, FRA examined costs and benefits relative to conditions prior to issuance of EO 26 in the format of break-even analyses, which can be relied upon to indicate likely net benefit outcomes. Applying highly conservative assumptions, 20-year direct and indirect costs could total as much as $22.4 million (discounted at 7%) or $30.2 million (discounted at 3%). The break-even analyses show that, in all scenarios considered, it would not require an unreasonable decrease in the probability of an accident in order to at least break even. As discussed more completely in the Regulatory Impact Analysis accompanying this proposed rule, the frequency and severity of accidents together with the observed rising incidence of improper use of cell phones and other electronic devices strongly suggest that the elimination of improper electronic device usage by railroad operating employees, as proposed in this rule, will prevent more than one fatality every two years, and therefore, that the benefits of the requirements proposed exceed the costs.

C. Distracted Driving Impacts All Transportation Modes

The use of cell phones and other electronic devices has become ubiquitous in American society. There is strong evidence that people permit electronic devices to distract them from driving all kinds of vehicles and that such distractions can have serious safety consequences.

1. Aviation

On October 21, 2009, Northwest Airlines Flight 188 was enroute from San Diego to Minneapolis-St. Paul International/Wold-Chamberlain Airport with 144 passengers. Flight 188 overflew its destination airport by approximately 150 miles before air traffic controllers were able to contact the crew via radio. After the incident, the pilot and first officer told the NTSB that they had lost track of the plane's location because they had been distracted in the cockpit while using personal laptop computers and discussing airline crew scheduling procedures. Using personal laptop computers in the cockpit was a violation of airline policy, and the Federal Aviation Administration suspended the certificates of both the pilot and first officer on October 27, 2009.

2. Rail

See the discussion above.

3. Motorcoach

On November 14, 2004, a bus struck a bridge on the George Washington Parkway in Alexandria, Virginia, a serious accident that destroyed the roof of the motorcoach and injured 11 students, including one seriously. As determined by an NTSB investigation, the bus driver said he had been talking on a hands-free cell phone at the time

of the accident. Records from the bus driver's personal cell phone service provider showed that the bus driver initiated a 12-minute call on the morning of the accident. The driver said that he saw neither the warning signs nor the bridge itself before the impact. Evidence indicates that he did not apply any brakes before impacting the bridge. The NTSB concluded that the bus driver's cell phone conversation at the time of the accident diverted his attention from driving.

This crash resulted in the NTSB recommendation H–06–27 that commercial driver's license (CDL) holders with a passenger-carrying or school bus endorsement be prohibited from using cell phones or other personal electronic devices while driving those vehicles.

Statistics show that distraction from the primary task of driving presents a serious and potentially deadly danger. In 2008, 5,870 people lost their lives and an estimated 515,000 people were injured in police-reported crashes in which at least one form of driver distraction was reported on the crash report. While these numbers are significant, they may not state the true size of the problem, since it is difficult to identify distraction and its role in a crash. *See http://www.dot.gov/affairs/DOT%20HS%20811%20216.pdf.*

First, the data are based largely on police accident reports that are conducted after the crash has occurred. These reports vary across police jurisdictions, thus creating potential inconsistencies in reporting. Some police accident reports identify distraction as a distinct reporting field, while others identify distraction from the narrative portion of the report. Further, the data includes only those crashes in which at least one form of driver distraction was actually reported by law enforcement, thus creating the potential for an undercount.

In addition to, and contributing to, inconsistent reporting of distraction on police accident reports, there are challenges in determining whether the driver was distracted at the time of the crash. Self-reporting of negative behavior, such as distracted driving, is likely lower than actual occurrence of that behavior. Law enforcement must also rely on crash investigation information to determine if distraction was involved in those crashes with a driver death. The information available to law enforcement may not indicate distraction even where it was a cause of or a factor in the accident. For these additional reasons, reported crashes involving distraction may be undercounted.

D. Legal Basis for the Rulemaking

Congress required the Secretary of Transportation (Secretary) to complete a study on the safety impact of the use of personal electronic devices by safety-related railroad employees by October 16, 2009, and to report to Congress on the results of the study within six months after its completion. *See* Sec. 405(a) and (c) of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, Div. A, 122 Stat. 4848, Oct. 16, 2008 (122 Stat. 4885, 49 U.S.C. 20103 note). Sec. 405(d) of the RSIA authorizes the Secretary to prohibit the use of personal electronic devices that may distract employees from safely performing their duties based on the conclusions of the required study. The Secretary, in turn, has delegated the responsibility to carry out these duties and to exercise this authority to the Administrator of FRA. 49 CFR 1.49(oo). In addition, the Secretary has delegated general rulemaking authority to the Administrator, which FRA also is relying on for this proposed regulation. 49 CFR 1.49(m).

E. Studies

Due to differences in methodology and definitions of distraction, any study or survey conducted may arrive at different results and conclusions with respect to the involvement of driver distraction in causing a crash. A 2008 research paper sponsored by the National Highway Traffic Safety Administration (NHTSA) entitled, *Driver Distraction: A Review of the Current State-of-Knowledge,* discusses multiple means of measuring the effects of driver distraction including observational studies of driver behavior, crash-based studies, and experimental studies of driving performance. Each type of study has its own set of advantages and disadvantages.[1]

1. National Motor Vehicle Crash Causation Survey (NMVCCS)

NHTSA recently conducted a nationwide survey of crashes involving light passenger vehicles with a focus on factors related to pre-crash events.[2] The NMVCCS investigated a total of 6,950 crashes during the three-year period from January 2005 to December 2007. The report used a nationally representative sample of 5,471 crashes that were investigated during a two-and-a-half-year period from July 3, 2005, to December 31, 2007. Based on the sampling method of the survey, findings were representative of the nation as a whole.

Survey researchers were able to assess the critical event that preceded the crash, the reason for this event, and any other associated factors that might have played a role. Examples of the critical event preceding the crash include running off the edge of the road, failure to stay in the proper lane, or loss of control of the vehicle. Researchers assessed the reason underlying this critical event and attributed that reason to either the driver, the condition of the vehicle, failure of the vehicle systems, adverse environmental conditions, or roadway design. Each of these areas was further broken down to determine more specific critical reasons. For the driver, critical reasons included facets of driver distraction and, therefore, NMVCCS was able to quantify driver distraction involvement in crashes. The percentages included in this discussion are based on 5,471 crashes.

In addition to reporting distraction as the critical reason for the pre-crash event, NMVCCS also reported crash-associated factors. These are factors such as interior distractions that likely added to the probability of a crash occurrence. In cases where the researchers attributed the critical reason of the pre-crash event to a driver, researchers also attempted to determine the role and type of distraction. Of the crashes studied, about 18 percent of the drivers were engaged in at least one interior (*i.e.,* in-vehicle) non-driving activity (*e.g.,* looking at other occupants, dialing or hanging up a phone, or conversing with a passenger). For the most part, that activity was conversing either with other passengers or on a cell phone, as a total of about 12 percent of drivers in these crashes were engaged in conversation. Drivers between ages of 16 and 25 demonstrated the highest rate of being engaged in at least one interior non-driving activity.

2. 100-Car Naturalistic Driving Study

The 100-Car Naturalistic Driving Study was an observational study—via

[1] Ranney, Thomas A. (2008). "Driver Distraction: A Review of the Current State-of-Knowledge." DOT HS 810 787. Available online at:*http://www.scribd.com/doc/12073978/Driver-Distraction-A–Review-of-the-Current-StateofKnowledge.* A more comprehensive listing of research on distracted driving, which includes links to many of the reports discussed in this analysis, can be found online at: *http://www.nhtsa.dot.gov/portal/site/nhtsa/template.MAXIMIZE/menuitem.8f0a414414e99092b477cb30343c44cc/?javax.portlet.tpst=4670b93a0b088a006bc1d6b760008a0c_ws_MX&javax.portlet.prp_4670b93a0b088a006bc1d6b760008a0c_viewID=detail_view&itemID=97b964d168516110VgnVCM1000002fd17898RCRD&overrideViewName=Article.*

[2] National Highway Traffic Safety Administration (2009). "National Motor Vehicle Crash Causation Survey: Report to Congress." DOT HS 811 059. Available online at: *http://www-nrd.nhtsa.dot.gov/Pubs/811059.PDF.*

instrumented vehicles—to provide details on driver performance, behavior, environment, and other factors associated with critical incidents, near-crashes, and crashes for 100 cars over a one-year period.[3] This exploratory study was conducted to determine the feasibility of a larger-scale study that would be more representative of the nation's driving behavior. Despite the small scale of the 100-Car study, extensive information was obtained on 241 primary and secondary drivers over a 12- to 13-month period occurring between January, 2003, and July, 2004. The data covered approximately 2 million vehicle miles driven and 43,000 hours of driving. As stated in *An Overview of the 100-Car Naturalistic Study and Findings,* "the goal of this study was to maximize the potential to record crash or near crash events through the selection of subjects with higher than average crash or near crash risk exposure."[4] In order to achieve this goal, the 100-car study selected a larger sample of drivers who were 18–25 years of age and who drove more than average.

Additionally, the subjects were selected from the Northern Virginia/Washington, DC metropolitan area which offers primarily urban and suburban driving conditions, often in moderate to heavy traffic. This type of purposive sample served well the intentions of the study; however, it also created limitations on the application of the findings. The findings of the 100-car study cannot be generalized to represent the behavior of the nation's population or the potential causal factors for the crashes that occur across the nation's roadways.

During the 100-car study, complete information was collected on 69 crashes, 761 near-crashes, and 8,295 incidents. The encompassing term *inattention* was classified during this study as (1) Secondary task involvement, (2) fatigue, (3) driving-related inattention to the forward roadway, and (4) non-specific eye glance away from the forward roadway. Secondary task involvement is defined for the study as driver behavior that diverts the driver's attention away from the driving task; this may include talking on a cell phone, eating, talking to a passenger, and other distracting tasks. Results of the 100-car study indicate that secondary task distraction contributed to over 22 percent of all the crashes and near-crashes recorded during the study period.[5] This study found that when a secondary task took the driver's eyes off of the road for more than 2.0 seconds (out of a 6.0-second time interval), the odds of a crash or near-crash event occurring significantly increased.

3. National Occupant Protection Use Survey (NOPUS)

NHTSA's annual survey of occupant protection also collects data on electronic device use. NOPUS provides the only probability-based observed data on driver electronic device use in the United States.[6] Based on the sampling method of the survey, findings are representative of the nation as a whole. In 2008, it was estimated that about 6 percent of all drivers were using hand-held cell phones while driving during daylight hours. This finding means that about 812,000 vehicles on the road at any given daylight moment were being driven by someone using a hand-held cell phone in 2008. Survey data from the previous year yielded an even higher figure: according to NOPUS, in 2007 about 1,005,000 vehicles were being driven by someone using a hand-held cell phone at any given daylight moment.[7] Another finding was that in both 2007 and 2008 an estimated 11 percent of vehicles in a typical daylight moment were driven by someone who was using some type of electronic device, either hand-held or hands-free.[8]

4. Motor Vehicle Occupant Safety Survey (MVOSS)

The MVOSS is a periodic national telephone survey on occupant protection issues. The most recent administration of the survey was in 2007. *Volume 4, Crash Injury and Emergency Medical Services Report,* includes discussion of questions pertaining to wireless phone use in the vehicle.[9] According to the report summarizing the 2007 data, 81 percent of drivers age 16 and older usually have a wireless phone in the vehicle with them when they drive. Drivers over the age of 54 were less likely than younger drivers to have them—87 percent of 16- to 54-year olds, 74 percent of 55- to 64-year-olds, and 63 percent of drivers age 65 and older. Of those drivers who usually have a wireless phone in the vehicle, 85 percent said they keep the phone on during all or most of their trips. Among drivers who keep the phone turned on when they drive, 64 percent always or usually answer incoming phone calls.

Of the drivers who usually have a wireless phone in the vehicle with them when they drive, 16 percent said they talk while driving during most or all of their trips, and 17 percent said they talk on their wireless phone during about half of their trips. On the other hand, 22 percent of individuals reported never talking on their phone while driving. When driving and wanting to dial the phone, 32 percent of those who at least occasionally talk on the phone while driving tend to dial the phone while driving the vehicle. An additional 37 percent tend to wait until they are temporarily stopped, and 19 percent tend to pull over to a stop to place the call. Ten percent stated they never dial while driving.

F. Other Efforts

1. State Action

Rhode Island recently enacted a ban on text messaging, becoming the 19th State (in addition to the District of Columbia and Guam) to prohibit all drivers from using a text messaging device to write or send a text message while operating a motor vehicle in motion or in the travel portion of a roadway. The law, effective November 10, 2009, makes the activity a primary enforcement crime with the potential of a civil penalty to be imposed and a fine if convicted.

2. Federal Action

On October 1, 2009, during DOT's Distracted Driving Summit, the President issued Executive Order 13513 on "Federal Leadership on Reducing Text Messaging While Driving." Among

[3] Dingus, T.A. *et al.* (2006). "The 100-Car Naturalistic Driving Study, Phase II—Results of the 100-Car Field Experiment." DOT HS 810–593. Available online at: *http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/Crash%20Avoidance/Driver%20Distraction/100CarMain.pdf.* Neale *et al.* (2005). "An Overview of the 100-Car Naturalistic Study and Findings." NHTSA Paper Number 05–0400. Available online at: *http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/Crash%20Avoidance/Driver%20Distraction/100Car_ESV05summary.pdf.*

[4] Neale *et al., supra* note 3.

[5] Klauer *et al.* (2006). "The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data." DOT HS 810 594. Available online at: *http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/Crash%20Avoidance/Driver%20Distraction/810594.pdf.*

[6] National Highway Traffic Safety Administration (2009). "Driver Electronic Device Use in 2008." DOT HS 811 184. Available online: *http://www-nrd.nhtsa.dot.gov/Pubs/811184.PDF.*

[7] National Highway Traffic Safety Administration (2008). "Driver Electronic Device Use in 2007." DOT HS 810 963. Available online at: *http://www-nrd.nhtsa.dot.gov/Pubs/810963.PDF.*

[8] NHTSA (2008) *supra* note 7 and NHTSA (2009) *supra* note 6.

[9] Boyle, J. M and C. Lampkin (2008). "2007 Motor Vehicle Occupant Safety Survey Volume 4: Crash Injury and Emergency Medical Services Report." DOT HS 810 977. *See* report summary dated March 2009 online at: *http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Communication%20&%20Consumer%20Information/Traffic%20Tech%20Publications/Associated%20Files/tt371.pdf.*

other things, the Order prohibits all Federal employees from engaging in text messaging while—

- Driving Government-owned, -leased, or -rented vehicles;
- Driving privately-owned vehicles while on official Government business; and
- Using electronic equipment supplied by the Government (including, but not limited to, cell phones, BlackBerries, or other electronic devices) while driving any vehicle.

II. Summary of Proposed Rule

The proposed rule largely codifies E.O. 26. Some substantive changes have been made in response to comments from interested parties and practical issues that FRA discovered since the Order was issued. FRA is proposing to keep many of the same restrictions on personal and railroad-supplied devices as in the Order, but has altered them somewhat to account more appropriately for such issues as calculators, cameras, and the usage of electronic devices by deadheading employees.

III. Comments from Interested Parties on Railroad Operating Employee Use of Electronic Devices

A. General

FRA has already received significant input from a Railroad Safety Advisory Committee (RSAC) working group on the issue of railroad operating employees using electronic devices. At the time that FRA decided to issue an emergency order, FRA had already been working within the RSAC's Operating Rules Working Group to create an FRA Safety Advisory and was near a final draft. That proposed Safety Advisory and the suggestions and concerns voiced by members of the RSAC were instrumental in FRA's development of the Order.

Despite these previous consultations and discussions with stakeholders, there was still concern about some of the requirements of the Order. On November 14, 2008, the United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers and Trainmen (BLET) (collectively, "Unions") jointly filed a Petition for Review (Petition) of the Order. The Petition cited four concerns:

(1) The Order did not exempt deadheading employees who were in the body of a passenger train or railroad business car, or inside of the cab of locomotive that was not the lead locomotive of the train;

(2) The Order prohibited employees from taking a picture or video of a safety hazard with an electronic camera;

(3) The Order prohibited the use of calculators;

(4) The Order prohibited the use of Global Positioning System (GPS) tracking devices, even to verify the accuracy of the speed indicator in a controlling locomotive.

This proposed rule addresses the Unions' concerns and adopts the substance of many of their suggestions.

The Association of American Railroads (AAR) responded to the Unions' Petition in a letter dated December 3, 2008. AAR asserted that the changes suggested in the Petition are unnecessary, could create distractions, or would make E.O. 26 "difficult, if not impossible" to enforce. AAR recommended that the changes suggested in the Petition should be "scrutinized" as part of the study of the use of "personal electronic devices, including cell phones, video games, and other distracting devices" that is required by Sec. 405 of RSIA or discussed within the RSAC before being adopted. FRA shared some of these concerns and considered the necessity and potential distractions of each of the proposed exceptions of the Unions' Petition. Additionally, in this proposed rule, FRA is endeavoring to protect the enforceability of limits on the use of electronic devices.

B. Deadheading Employees

The Petition recommended adding an exception for deadheading employees to use cell phones. The specific language proposed was as follows:

> A railroad operating employee who is deadheading may use a cell phone while within the body of a passenger train or railroad business car, or while inside the cab of a locomotive that is not the lead locomotive of the train on which the employee is deadheading.

FRA recognizes that the scope of the Order is far-reaching and in some cases, covers employees in situations in which the safety hazards that the Order was designed to prevent do not arise. The Order currently states, "Use of a personal electronic or electrical device to perform any function other than voice communication while on duty is prohibited." A railroad operating employee is on duty even when he or she is simply deadheading to a duty station, even if the deadheading takes places in a motor vehicle. He or she is not, however, on duty nor off duty, but in limbo, if deadheading from a duty station to the point of final release and so is not currently covered by the Order even if he or she is distracting a locomotive engineer operating a train by talking on a cell phone right next to him or her. FRA has decided to address the issues in deadheading directly to guard against the hazards of distractions by electronic devices in a more focused and consistent manner.

The proposed rule allows deadheading railroad operating employees who are not in the cab of a controlling locomotive to use electronic devices if that use does not interfere with an employee's personal safety or performance of safety-related duties. The proposed rule would require deadheading employees within the cab of a controlling locomotive to have electronic devices turned off when the train is moving or in other situations in which the crewmembers responsible for operating the train need to be able to focus. FRA believes that these proposed changes would restrict the use of electronic devices in a more appropriate manner to address safety concerns.

C. Cameras

The Petition also recommended that cameras be permitted to document safety hazards. Specifically, it recommended the following language to be added as an exception:

> An electronic still or video camera may be used to document a safety hazard or a violation of a rail safety law, regulation, order or standard; provided, that (1) the use of a camera in the cab of a moving train may only be by a crew member other than the locomotive engineer, and (2) the use of a camera by a train employee on the ground is permissible only when (a) the employee is not fouling a track, (b) no switching operation is underway, (c) no other safety duties are presently required, and (d) all members of the crew have been briefed that operations are suspended. The use of the photographic function of a cell phone is permitted under these same conditions.

FRA believes that allowing employees to document safety hazards could be useful in certain situations, but realizes that cameras can be exceptionally distracting. To that end, FRA is proposing the following: the camera may only be used to document a safety hazard or safety violation; the camera must be a stand-alone device and turned off immediately after the picture is taken; and the locomotive engineer must not take pictures in the cab of the controlling locomotive of a moving train.

These conditions are reasonable. EO 26 currently has no exception for cameras. They can, however, serve a useful purpose if used properly but also create unsafe situations. To that end, FRA is proposing that a camera may be used only by someone other than the locomotive engineer and only to document safety hazards. In addition, the camera must be a stand-alone device. Enforcement of restrictions on

electronic devices is already difficult because the prohibited use often has to be witnessed first-hand for a violation to be discovered. If the exception existed as recommended by the Petition, railroad operating employees caught using their cell phones for sending a text message might allege that they were using the camera function instead. Requiring that the camera be a stand-alone device prevents this enforcement problem.

D. Calculators

The use of calculators was another desired exception contained within the Petition. In particular, the Petition requested the following exemption:

> When mathematical calculations are required for safe train movement (*e.g.,* managing correct horsepower per ton, calculating tons per operative brake, dynamic brake and tractive effort compliance, and correcting train length), it is permissible to perform such calculations by using an electronic calculator, or by using the calculator function of a cell phone or electronic timepiece.

FRA agrees that train crews can have a legitimate need for a calculator in some instances. To that end, FRA has decided to exclude stand-alone calculators from all restrictions within this subpart as long as the calculator is used for an authorized business purpose and does not interfere with the performance of any employee's safety-related duties. The proposed rule, however, does not permit the use of a calculator function of a cell phone or electronic timepiece, for the same reason that cameras must be stand-alone devices; enforcing limits on the use of electronic devices could be hampered by allowing some uses but not others of a device at any given time.

E. GPS Devices

Noting that FRA regulations require speed indicators of most locomotives to be checked as soon as possible after departure, the Petition requested that the use of Global Positioning System (GPS) devices to be excluded from the Order for that purpose. The Petition requested an exception that stated, "A Global Positioning Satellite (GPS) tracking device may be used in order to verify the accuracy of the speed indicator in a controlling locomotive."

FRA is concerned that these devices could distract operating employees and potentially create an unsafe situation. We do not believe that any potential advantage of allowing these devices outweighs the safety hazard involved and accordingly such use is proposed to be prohibited.

IV. Other Considerations

A. Medical Devices

Beyond the suggestions and concerns formally addressed in the Petition, FRA has realized that the Order, in some instances, covered more situations and devices than was intended or desired. For example, some diabetics use electronic devices to monitor glucose. These devices arguably do not fall under the Order's exception for devices that enhance an individual's ability to perform safety-related tasks. FRA is proposing an exception for medical devices to encompass both devices that enhance an ability to perform safety-related tasks, such as hearing aid, and other devices that protect an employee's health and well-being.

B. Exception for Working Wireless Communication Devices for Train Movements

The Order has an exception for railroad operating employees to use a railroad-supplied or railroad-authorized electronic device to conduct train or switching operations "under conditions authorized under 49 CFR Part 220." This exception was included to reflect the reality that many small railroads use cell phones or similar devices instead of a working radio and to allow those railroads to continue to do so. The proposed rule clarifies that this exception was only intended for small railroads.

C. Locomotive Engineer Certification Revocation

FRA is considering amending 49 CFR part 240 (part 240) to add violations of this subpart as a basis for revoking a locomotive engineer's certification. *See* 49 CFR 240.117(e). FRA specifically invites comments on this issue and based on the comments received may include a revision of part 240 in the final rule issued in this rulemaking.

V. Enforcement Issues

One of the concerns FRA had before issuing the Order was that it is difficult to enforce violations of restrictions on electronic devices by railroad employees. Unlike equipment or track problems, which can be readily seen, or even training violations, which must be documented, it is difficult to detect unauthorized use of cell phones and other personal electronic devices. FRA inspectors only ride with train crews a fraction of the time as part of the inspection process. It is unlikely that a locomotive engineer operating a moving train would begin to text message or call friends while an FRA inspector was present. Of course, personal cell phone records, combined with the operating record of the locomotive, would be able to indicate that the locomotive engineer was improperly calling someone while the engineer was supposed to be fully focused on operating a train.

Because of the evidentiary difficulties associated with establishing violations of restrictions on use of electronic devices, and the help that personal phone records would provide, FRA considered adding a provision regarding those records. FRA debated requiring railroads to require their operating employees to allow the railroads access to the employees' personal cell phone records if the employees were involved in any accident for which the employer has a reasonable belief that the employees' acts or omissions contributed to the occurrence or severity of the accident. FRA declines to add such a provision at this time. A significant factor in this determination is the broad statutory authority that FRA has to investigate accidents, including the issuance of subpoenas, under 49 U.S.C. 20107 or 20902. When there is a reasonable belief that an accident was caused or affected by a railroad operating employee's actions or omissions, FRA will subpoena that employee's cell phone records or other personal records if they are related to FRA's investigation. FRA does so now. However, FRA is requesting comment on the utility of such a provision and whether it would be useful in gathering data on safety incidents that do not result in accidents. FRA also seeks comment on the privacy concerns implicated by such a measure and on any suggested procedures or limitations that should be followed in the event FRA ever proposed such a provision.

FRA understands that this rulemaking covers a wide range of devices and that many of these electronic devices have become ingrained in our contemporary culture. FRA also understands that, in a genuine personal emergency, employees of some railroads have an advantage in their ability to be contacted through channels that the railroad has created. FRA did not, however, expressly include an exception for personal emergencies. FRA requests comments on whether an express exception should be created to address personal emergency situations and, if so, how it should be expressed.

VI. Section-by-Section Analysis

All section references below refer to sections in Title 49, Part 220 of the Code of Federal Regulations (CFR). FRA seeks comments on all proposals made in this NPRM. Proposed Amendments to 49 CFR part 220 (part 220).

Section 220.1 Scope

FRA proposes to amend the scope of § 220.1 to include the new subpart C proposed by this NPRM. The proposed amendment states that part 220 now sets forth prohibitions, restrictions, and requirements for the use of electronic devices. It also establishes that these are only minimum restrictions that must be complied with and that railroads are free to impose stricter prohibitions at their discretion.

Section 220.5 Definitions

FRA proposes to amend the existing "definitions" section for Part 220 by both adding new definitions and amending an existing definition. FRA proposes to add new definitions for the following terms: earpiece; fouling a track; in deadhead status; medical device; electronic device; personal electronic device; railroad operating employee; railroad-supplied electronic device; and switching operation. FRA also proposes to amend Part 220's existing definition of "train."

Of the new terms that FRA proposes to add to this section, all but two had been previously defined in the Order. Some of those definitions have been amended slightly to be more efficiently focused toward accomplishing the goals of this proposed rule. For example, in describing "electronic device," FRA broadens that description from that found in the Order to ensure that the definition in the proposed rule includes electronic book-reading devices or devices used to replicate navigation of the physical world. We have also excepted locomotive electronic control systems and digital timepieces from the definition. The first exception makes clear that this subpart does not affect the use of any control systems or displays in the cab of a locomotive that facilitate the operation of a train. This rule instead obviously intends to address electronic devices that are not part of those systems. The second exception allows railroad operating employees the use of digital clocks or wristwatches whose primary functions are as timepieces. Timepieces are commonly used in the railroad industry to verify the accuracy of a locomotive's speed indicator. This function is safety-related in that it accurately allows a train crew to comply with relevant track speed limits during the course of a train's movement. FRA notes that this specific provision is limited to allowing the use of a stopwatch, wristwatch, or other similar device whose primary function is the keeping of time. This provision does not allow for the use of other devices, such as a cell phone or a personal digital assistant, that might have a stopwatch function but whose primary purpose is not that of a timepiece. FRA has so limited this exception specifically to timepieces as enforcement otherwise would be difficult, but also primarily to avoid the potential for distraction when an employee might turn on a cell phone with a stop watch function in order to verify the train's speed, but then might proceed to use that device in an otherwise impermissible manner.

FRA has also chosen to refer to an "electronic or electrical device" as only an "electronic device" in the proposed rule. We have done so both for the purposes of complying with plain language directives and for brevity. We have also done so because, based on our research, "electronic device" is a more accurate descriptor of the devices meant to be subject to this proposed rule. The definition of "railroad operating employee" has also been changed from that found in the Order. We have attempted to clarify which employees are covered by this proposed rule in order to avoid inadvertent over-inclusion. The definition of "railroad-supplied electronic devices" has also been modified from the Order to mean that the term refers only to devices that are provided for a business purpose authorized by the employing railroad. FRA has slightly changed that definition in order to focus more narrowly on which devices will be considered railroad-supplied.

The only truly new definitions that were not established in some form in the Order are for the terms "earpiece," "in deadhead status," and "medical device." FRA proposes to add a definition for the term "in deadhead status" because below in proposed § 220.311 we explain that railroad operating employees in deadhead status are subject to somewhat different prohibitions on the use of electronic devices than are employees who are actively engaged in their assigned duties. The definition that we have proposed is similar to and consistent with the existing definition of "deadheading" found in existing 49 CFR 228.5. FRA also proposes adding the term "medical device" to the "definitions" section, as below we explain that the use of any electronic medical devices consistent with a railroad's medical fitness for duty standards is exempt from the restrictions of this subpart. After having had additional time since the publication of the Order to contemplate its effect, FRA wishes to make clear that medical devices such as hearing aids or blood sugar monitors are exempt from the prohibitions that this rule puts forth. FRA finds that these devices do not detract from rail safety, but they may actually enhance safety in some circumstances for obvious reasons.

Next, FRA proposes to amend the existing definition of a "train" in § 220.5. The existing definition specifically references a train for purposes of existing subparts A and B to include "one or more locomotives coupled with or without cars requiring an air brake test in accordance with 49 CFR Part 232 or 238 * * *". The existing definition resulted from FRA's work with an RSAC Working Group and intentionally meant to exempt certain trains and switching operations from the existing part 220. That existing definition will still apply to subparts A and B. However, we have proposed that the definition of a "train" for purposes of subpart C would go beyond locomotive or locomotives coupled to one or more cars that are subject to the requirements of an air brake test. We propose a more inclusive definition of "train" in order to apply the prohibitions on use of electronic devices to all switching movements.

Finally, FRA has eliminated one definition from this proposed rule that appeared in the Order. The term "wireless communication device" has been eliminated, as the term "working wireless communications" is already included in existing § 220.5, and encompasses the substance of what FRA attempted to convey with that definition in the Order, and also because the devices described in that definition are already addressed by other provisions of this proposed rule.

Subpart C—Electronic Devices

Section 220.301 Purpose and Application

FRA proposes to amend part 220 by adding a new subpart C. FRA's purpose for promulgating this new subpart is to limit distractions caused by electronic devices to railroad crews. FRA means to limit these distractions in its effort to improve railroad safety and prevent incidents such as those mentioned in the preamble above, where loss of human life, injuries, and property damage may have been attributable to distraction by these devices. FRA notes that this proposed subpart sets forth minimum standards that must be complied with, yet we fully anticipate that railroads will implement even stricter guidelines via operating rules. This is consistent with both existing and proposed § 220.1, which provides that part 220 only sets minimum standards that must be complied with, but that

railroads may adopt additional, more stringent, requirements.

Section 301 of this new proposed subpart describes both its purpose and application. Paragraph (a) of this section merely restates the new subpart's purpose as described above. Paragraph (b) makes clear that the new proposed subpart does not affect the use of working wireless communications that railroads use under the authority of existing subparts A and B. Paragraph (c)(1) explains that this proposed regulation also does not in any way propose to affect the use of railroad radios. Railroad radios are an essential part of daily operating practices, and FRA wishes to make explicit that this new subpart does not apply to their use. Proposed paragraph (c)(2) of this section explains that in the event of a working railroad radio failure, that locomotive engineers or conductors may use electronic devices provided that use is in accordance with the applicable railroad's operating rules. FRA recognizes that in certain instances the use of an electronic device such as a cell phone in place of a malfunctioning radio may actually enhance safety rather than harm it. For example, should a crew need to contact a train dispatcher regarding their train's movement, a cell phone might in certain instances be the best means of reaching such a person in the event of a radio failure, and may provide a higher level of safety than not being able to make contact at all. So long as the device is used with the parameters of railroad operating rules, FRA has made this exception to the prohibitions on use of electronic devices discussed below.

Section 220.303 General Use of Electronic Devices

FRA is proposing to add § 220.303 to this new subpart to set forth general guidance regarding the use of electronic devices. This proposed section would prohibit railroad operating employees from using electronic devices in any way that would detract from railroad safety, irrespective of the other specific provisions and exceptions to this rule. This provision reinforces FRA's overarching mission of ensuring safety while railroad employees are performing their duties. As discussed above, distractions resulting from the use of electronic devices can result in railroad accidents that have catastrophic consequences. This paragraph is also meant to encompass other potential uses of electronic devices that may arise outside those detailed or contemplated by this proposed rule or by railroad operating rules. Section 220.303 is intended to be restrictive, as FRA views any use of electronic devices not contemplated in this proposed subpart as capable of distracting employees while on duty.

Section 220.305 Use of Personal Electronic Devices

This section is being proposed to prohibit the use of personal electronic devices while any safety-related duty is being performed. This provision governing personal electronic devices is self-explanatory, and is meant to be more restrictive than provisions governing railroad-suppled electronic devices. *See* proposed § 220.307 discussed below. Provisions (a) through (c) of this proposed section dictate certain safety-critical times during which each personal electronic device must be turned off with any earpiece removed, and are meant to encompass the situations in which FRA finds it is absolutely impermissible to use a personal electronic device. FRA notes that compliance with this proposed section might have prevented many of the accidents described above and in the Order that occurred as a result of distraction caused by electronic devices.

Section 220.307 Use of Railroad-Supplied Electronic Devices

This section is proposed to address the use of electronic devices that are supplied by the railroad to employees, other than a working railroad radio. Paragraph (a) sets forth the general restriction that any use of these devices must be in accordance with railroad instructions for authorized business purposes as determined by the railroad. FRA also wishes to make clear that the use of railroad-supplied devices contemplated by this provision is limited to those authorized by the railroad in writing.

Paragraph (b) sets forth the specific instances where FRA proposes to prohibit any use of railroad-supplied electronic devices by a locomotive engineer who is at the controls of a train. Similar to the conditions set out in § 220.305, paragraph (b) of § 220.307 describes specific instances where FRA finds distraction by electronic devices impermissibly interferes with railroad safety. While the actions specified in paragraph (b) are taking place, it is imperative that a locomotive engineer be attentive to his or her duties and not be distracted by any electronic device, regardless of whether that device is railroad-supplied or not. FRA also notes that it considers paragraph (b)(3) of this section to encompass those times when passengers are boarding or alighting from a train. For example, if a locomotive engineer at the controls of a passenger train was using a railroad-supplied electronic device while the train was stopped and passengers were boarding, FRA views that conduct as a violation of this proposed regulation. Paragraph (c) sets forth the circumstances under which an operating employee other than a locomotive engineer in the situations described in paragraph (b) may use a personal electronic device while located in the cab of a controlling locomotive. This paragraph (c) states that it only proposes to permit use of a mobile telephone or remote computing device. These two devices may only be used if a safety briefing is held by all crewmembers in the locomotive, who must then also come to an agreement that it is safe to use the device. It is FRA's intent that the permissible use of these devices under this paragraph must be for a railroad-related purpose, *e.g.,* to contact a dispatcher, control operator, or yardmaster. It is not permissible to use the mechanisms provided by this section to use an electronic device for a personal use, such as making a personal phone call or watching a movie. FRA has also chosen to restrict the number of devices that may be used to only two. By limiting the type of devices that are permitted to be used under the authority of this paragraph, FRA is attempting to ensure minimum distractions and narrow the scope of this provision. This provision and the provision found in paragraph (d) of this section discussed below both state that they apply only to employees who are not in deadhead status. Different rules apply to employees in deadhead status, as is explained below in the analysis to § 220.311.

Paragraph (d) of proposed § 220.307 explains the conditions under which it is permissible for an operating employee who is outside the cab of a controlling locomotive to use a railroad-supplied device. It sets forth three conditions that must be met for that use to be permitted. The first condition is that no crewmember may be fouling a track. The second condition, at paragraph (d)(2) of this proposed section, states that all operations must be suspended. For example, this provision requires that no switching operations are being performed, no portion of an air brake test is in progress, or essentially that no duties are presently required of the crewmember, including railroad radio communications. The third condition is that all crewmembers must be briefed that operations have been suspended before use of a device under this provision is permissible. An instance described in the background section of

the Order discusses an incident that occurred on December 21, 2005, when a contractor working on The Kansas City Southern Railway Company was struck and killed by a train after fouling a track while allegedly talking on a cell phone. Although in that case the incident involved a contractor who was apparently not a train employee, FRA notes that compliance by operating employees with the provisions of paragraph (d) would eliminate any similar occurrences among operating employees resulting from the impermissible use of electronic devices.

Section 220.309 Permitted Uses

This section proposes to establish six uses of electronic devices that FRA finds to be permissible. This list is intended to be exhaustive. FRA has specifically weighed other exceptions and uses, such as the BLET and UTU's proposed GPS device exception discussed above. After contemplating those other uses, at this time FRA does not agree there is a need for further permitted use of electronic devices other than those described here. However, we welcome additional comment and input on this subject. Also, as stated in the text of this section, these permitted uses are subject to the requirement that the use not interfere with any employee's safety-related duties. This is consistent with the overall goals of this proposed rule, and also specifically with the general prohibition established by proposed § 220.303 discussed above.

Paragraph (a) of § 220.309 refers to electronic storage devices that specifically hold relevant operating documents that a crew might need to access during the normal course of their duties, as FRA is aware that some railroads issue devices to their operating employees that contain such information. FRA views this use as no different from a crewmember accessing relevant paperwork, such as a railroad timetable or train consist, in hardcopy form during the course of her duties. However, as stated in the text of paragraph (a), the use of this device must be authorized under an applicable railroad operating rule. For example, if a freight conductor wished to utilize a railroad-supplied electronic device while in the cab of the controlling locomotive of a moving train for the purpose of accessing a railroad operating rule, he would be allowed to do so if permitted by applicable railroad operating rules. If railroad operating rules more stringent than those provided by this subpart prohibited the use of that device while on a moving train, then that use would be disallowed. Importantly, FRA also notes that this exception must not be read to permit a locomotive engineer at the controls of a moving train, or in any of the situations described in proposed § 220.307(b), to use one of these devices.

Paragraph (b) of this section specifically allows for the use of personal electronic devices in response to an emergency situation. This paragraph is meant to allow flexibility to this proposed regulation, as common sense dictates that unpredictable emergency situations may arise where use of a personal electronic device, such as a cell phone, may be appropriate. FRA contemplated this when it proposed § 220.303(b), which allows for use of a personal electronic device in instances where a radio failure occurs, but also proposes this broader emergency exception to build in flexibility where common sense dictates.

Paragraph (c) sets forth the proposed guidelines under which an employee may take a photograph or video to document a safety hazard or violation of a rail safety regulation, order, or standard, subject to several requirements. This permitted use was suggested by the BLET and UTU, as discussed above. This proposed provision dictates that only cameras whose primary function is for taking still pictures or videos may be used. As stated in the rule text, a camera that is part of a cell phone or other electronic device is not included in this exception for the reasons explained above. Use of the camera to document such rail safety hazards or violations is only permitted where its use does not interfere with a crewmember's performance of a safety-related duty, is turned off immediately after documentation has been made, and is not used by a locomotive engineer who is at the controls of a moving train. While FRA realizes the importance of documenting potential hazardous conditions, we emphasize that such documentation should only be made when the taking of the documentation itself would not create a hazardous situation.

Paragraph (d) permits the use of a calculator, as also suggested by the BLET and UTU in response to the Order. The use of this device is common in the railroad industry for important safety-related purposes. Train tonnage, train length, and train stopping formulas are commonly computed using a calculator. An example of the safety-related reasons for allowing the use of a calculator includes the need to compute train length accurately so that a locomotive engineer (via the locomotive's distance counter) can accurately ascertain when his or her train has cleared a relevant speed restriction, interlocking, or working limits. However, consistent with paragraph (c) above, FRA has chosen to limit the permissible devices under this paragraph to those whose primary purpose is as a calculator. FRA will not allow the use of another device, such as a personal cell phone that might have a calculator function, to be used. The temptation afterward to then use that device for another non-permissible electronic activity might be too great, and again could cause enforceability problems for FRA. It should be noted, however, that this exception should not be read to permit a locomotive engineer to use a calculator on a moving train, or in any of the situations described in proposed § 220.307(b).

Paragraph (e) permits the use of a medical device, if that use is consistent with the railroad's standards for medical fitness for duty. In putting forth this exception, FRA envisioned blood sugar monitors used by operating employees with diabetes, hearing aids used by operating employees with hearing loss, *etc.* The definition of a "medical device" was added to the definitions section of this part, at § 220.5, as is discussed above. FRA finds that the use of these devices does not detract from rail safety and in many instances may enhance it. For example, an operating employee with hearing loss who utilizes an electronic hearing aid may consequently be able to communicate via working radio more effectively, resulting in safer train operations.

Paragraph (f) permits the use of wireless communication devices for crewmembers of trains that are exempt from the requirement of a working radio under § 220.9(b). That section exempts railroads that have less than 400,000 annual employee work hours from being required to have a working radio on the controlling locomotive of certain trains so long as such usage is limited to performing the employees' railroad duties. FRA proposes this exception to allow smaller railroads to continue to operate as they are presently permitted. The locomotives of these railroads do not operate at high speeds, do not handle regular passenger traffic, are only permitted to operate over joint territory in specific, low-speed circumstances, and must have working wireless communications aboard the controlling locomotive of trains containing placarded hazardous material loads. As such, FRA finds there is no safety risk in continuing to allow permitted railroads to use wireless communication devices in place of railroad radios so long as such usage by

railroad employees is limited to performing their railroad duties. It is not the intent of this proposed rule to affect in any way the use of working wireless communications pursuant to existing Part 220, as those presently permitted business uses have not been problematic in regard to safety in the past. This rule is instead obviously directed at the type of use that occurred in the railroad accidents described above.

Section 220.311 Railroad Operating Employees in Deadhead Status

This section proposes to establish guidelines for the use of an electronic device by operating employees in deadhead status. The definition of "in deadhead status" has been added to the "definitions" section of this part at § 220.5 as discussed above. Paragraph (a) of this section allows for employees in deadhead status to use electronic devices so long as that use does not interfere with that employee's personal safety or any other employee's performance of safety related duties. FRA proposes this loosened restriction on employees in deadhead status as we recognize that while deadheading, operating employees typically do not have any safety-related responsibilities. As stated above, these proposed changes amend the restrictions on electronic devices put forth in the Order in a more appropriate manner to address safety concerns.

However, paragraph (b) of this proposed section limits the use of any electronic device by employees in deadhead status who are located inside the cab of a controlling locomotive of a train. Employees in deadhead status who are located inside the cab of a controlling locomotive must follow the identical restrictions set forth both in this provision and in § 220.305, regardless of whether the device is a personal electronic device or a railroad-supplied electronic device. This is to reflect that any use of electronic devices in the cab of a controlling locomotive has the potential to distract employees engaged in safety-related duties, no matter the status of person using a device. This proposed provision more strictly prohibits the use of any railroad-supplied device than does § 220.307, as employees in deadhead status typically do not have any safety-related responsibilities that would necessitate use of such devices.

Section 220.313 Instruction

This proposed section would require railroads to provide instruction to its operating employees on the substance of this proposed regulation if adopted. This instruction is obviously a necessary requirement if employees would be operationally tested by railroad supervisors on the substance of this regulation, as FRA has proposed in § 220.315(a). Very simply, by requiring such training we also hope also to ensure that both railroads and their employees are fully aware of the requirements of the final regulation.

In paragraph (a), FRA proposes that each railroad maintain a written program that will qualify its operating employees for compliance with operating rules implementing the requirements of the final rule. The written program may be consolidated with the program of instruction required under 49 CFR 217.11. Paragraph (a)(1) would specifically require that the program include instruction on both the requirements of this subpart as well as consequences of non-compliance. Paragraph (a)(2) proposes that the written program be required to include instruction on specific provisions of this rule. FRA notes that proposed paragraph (a)(2)(iii) would specifically require that instruction be provided on the distinctions between the requirements of the final rule and any more stringent railroad operating rules. FRA proposes to mandate this instruction because of the different potential consequences involved with violation of this subpart versus violation of a railroad rule. If FRA were to find a probable violation of the final rule had occurred, FRA could attempt to take action against an individual employee by way of its authority to impose a monetary civil penalty or disqualification of that employee from safety-sensitive service. These actions are quite different, and in some instances much more severe than those that a railroad might take against an individual employee for a violation of its operating rules. The distinction is also important given FRA's request for public comment above on whether violations of the final rule should be considered for purposes of locomotive engineer certification revocation in the future.

Paragraph (b) sets the proposed implementation schedule for this section. Paragraph (b) states that within 120 days from the publication date of the final rule, employees performing duties subject to these requirements shall receive instruction on the requirements of this subpart. Under paragraph (b)(1), after 120 days from the publication date of the final rule FRA proposes no further grace period and requires that employees receive recurrent training at least every three years. FRA expects that new operating employees would receive the proper training before being allowed to perform duties subject to the requirements of this subpart. FRA proposes a three-year recurrent training window in this paragraph because it is a standard industry practice to re-qualify employees on operating rules at least every three years. Finally, in paragraph (b)(2), FRA proposes that records maintenance of the training required by this section shall serve as documentation that employees have been qualified on the requirements of this subpart.

In paragraph (c), FRA proposes that training records discussed in paragraph (b)(2) be retained at a railroad's division headquarters where the employee is assigned. This will enable FRA to quickly obtain such records upon request if necessary. Records must be kept for each employee trained on the requirements of this subpart, and must be kept for three years after the end of the calendar year to which they relate. This paragraph also would allow for railroads to keep the required records electronically.

Paragraph (d) provides a mechanism for FRA to review a railroad's written program required under paragraph (a). This proposed paragraph would require that the Associate Administrator for Railroad Safety/Chief Safety Officer only disapprove programs of instruction, training, and examination required by this section for cause stated. As the disapproval decision is made for cause, it is significant for the railroad to understand exactly why FRA is disapproving the program; thus, FRA proposes that its notification of such disapproval be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Railroad Safety/Chief Safety Officer disapproves the program, paragraph (d)(1) provides that a railroad would be required to respond within 35 days by either providing submissions in support of its program or by amending its program and submitting those proposed amendments. Paragraph (d)(1)(ii) proposes that the Associate Administrator for Railroad Safety/Chief Safety Officer shall render a final decision in writing informing the railroad of FRA's decision. Paragraph (d)(2) provides that a failure to submit a program with the necessary revisions to the Associate Administrator for Railroad Safety/Chief Safety Officer will be considered by FRA to be a failure to implement a program under this part.

The approach as proposed in paragraph (d) recognizes that FRA will want to review such written programs during audits or investigations, and that FRA should have the authority to request changes to the program if it does

not meet the minimum requirements of this rule. FRA does not intend to have each railroad submit its program for review and explicit approval. Rather, FRA intends to review the qualification programs of the major railroads over a multi-year cycle, in connection with review of the overall program of operating rules, to determine if they are effective.

Section 220.315 Operational Tests and Inspections; Further Restrictions on Use of Electronic Devices

This section proposes to mandate that railroads perform operating tests to ensure operating employees' compliance with proposed Subpart C. FRA also proposes this requirement to both help ensure that railroads provide employee instruction on the conditions of this subpart and to verify that the requirements of the subpart are being adhered to.

Paragraph (a) sets forth specific guidelines on the minimum number of operational tests that must be performed by referring to the guidelines established in 49 CFR part 217, Railroad Operating Rules. Per part 217, railroads are already required to perform regular operating tests on employees. This paragraph would merely add the proposed Subpart C to that existing requirement.

Paragraph (b) of this section proposes to prohibit railroad supervisors from calling or sending a text message to an electronic device of a locomotive engineer during an operating test while the train to which the engineer is assigned is moving. This is to prevent an operating test from posing potentially dangerous distractions that could impact rail safety. It is also meant to prevent the encouragement of potential rail safety violations.

Finally, paragraph (c) also proposes to prohibit the use of electronic devices by operating employees during an operating test. This necessarily requires that for this prohibition to apply, that employees be aware that an operating test is being conducted, as FRA recognizes that during certain operating tests employees might not be aware a test is in progress. FRA proposes this section so that during operating tests employees do not attempt what might otherwise be a permissible use of devices.

Operating tests present valuable learning opportunities that help to facilitate railroad safety. Therefore, it is FRA's goal that during operating tests both employees and railroad supervisors utilize the process in a way most beneficial to promoting rail safety. FRA proposes this section to help minimize employee distraction to ensure that those opportunities are fully utilized.

VII. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is a significant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, Feb. 26, 1979). FRA has made this preliminary determination by finding that, although the economic effects of the proposed regulatory action would not exceed the $100 million annual threshold as defined in Executive Order 12866, the rule is significant because of substantial public interest in transportation safety and because it is the first part of a broader programmatic effort to address distracted transportation operations. FRA has prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this final rule.

The RIA details estimates of the costs likely to be induced over the first twenty years after promulgation. This analysis also includes break-even analyses, or estimates of the monetized benefits that would be necessary to achieve to offset the total costs of the proposed rule. Informed by its analysis of the economic effects of both EO 26 and this proposed rule, FRA believes that this proposed rule will achieve the same safety outcome as EO 26 at a lower cost. The proposed rule achieves this outcome more cost-effectively relative to EO 26 by removing some restrictions on the usage of electronic devices by deadhead status employees and on the usage of calculators and cameras, under certain circumstances. These restrictions in EO 26 likely achieved little to no safety benefits, but they may have created substantial, unquantifiable opportunity costs, the removal of which makes this proposed rule more cost-effective. The costs that may be induced by this proposed rule over the twenty-year period considered include both direct costs and indirect costs. The direct costs may include the cost of revising operational testing and inspections programs; the cost of conducting additional operational testing and inspections; the cost of training employees; and the cost of calculators and cameras for train crew use. Indirect costs may include the opportunity cost of railroad operating employees' time spent in safety briefings. The summed total of the estimated direct costs over the first twenty years of the proposed rule equals about $12.7 million at a 3 percent discount rate and about $9.5 million at a 7 percent discount rate (in 2009 dollars). Additionally, the indirect costs that may result from this proposed rule are estimated to equal about $30.2 million at a 3 percent discount rate and $22.4 million at a 7 percent discount rate. The majority of the costs associated with implementation of the proposed rule would be costs that are already being incurred through the implementation of EO 26. The table below summarizes both the direct and indirect costs considered in the RIA, summed over the twenty-year period analyzed and discounted to present value using 3 percent and 7 percent discount rates.

	Twenty-year total (3% discount rate)	Twenty-year total (7% discount rate)
Direct costs:		
Revising programs	$48,007.64	$45,834.97
Performing operational tests	633,087.44	468,318.78
Training	11,586,287.79	8,635,014.44
Cameras	334,951.39	252,434.85
Calculators	75,080.95	74,083.90
Total direct costs	12,677,415.21	9,475,686.94
Indirect costs:		
Opportunity cost of additional time spent in safety briefings	30,238,989.11	22,368,926.84
Total indirect costs	30,238,989.11	22,368,926.84

Although FRA has not estimated the benefits of this rule, FRA has performed break-even analyses using differing assumptions regarding the frequency and severity of future accidents caused by or linked to electronic device usage. In most scenarios considered, it would not require an unreasonable decrease in the annual probability of such an accident in order for the proposed rule to at least break even—in fact, for most cases considered, decreases in relevant accident probability of less than 0.10 would make the proposed rule cost-beneficial. As an alternative framework, FRA compared the costs of the proposed rule to the minimum number of statistical fatalities that would need to be prevented for the rule to be cost-beneficial. Considering direct costs alone, if the new regulation prevented the loss of one-fifth of the value of a statistical life each year of the twenty-year period examined, the regulation would yield positive net benefits. If considering direct and indirect costs, the regulation would yield positive net benefits if it prevented the loss of just half of the value of a statistical life each year over the twenty-year period examined. In other words, prevention of one fatal accident every two years would justify the requirements of the proposed rule. For some perspective on the achievability of such prevention, FRA notes that over the period from 2000 to 2008, electronic device usage in trains likely caused or contributed to accidents resulting in at least 30 fatalities and over 100 injuries—an average of over three deaths per year, as well as significant train delay and property damages. The table below lists the benefits considered in the RIA.

Benefit
Fatalities avoided.
Injuries avoided.
Property damage avoided.

Given the frequency and severity of accidents together with the observed rising incidence of improper uses of cell phones and other electronic devices, FRA is confident that the elimination of improper electronic device usage by railroad operating employees, as proposed in this rule, will yield safety benefits that will exceed the costs. FRA requests comments on the Regulatory Impact Analysis.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure potential impacts of rules on small entities are properly considered, FRA developed this NPRM in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

As discussed in earlier sections of this preamble, FRA has discovered numerous examples proving the danger of distracting electronic devices. This rulemaking is intended to limit distractions caused by use of cellular telephones and other electronic devices in an effort to improve railroad safety and prevent incidents where loss of human life, injuries, and property damage may have been attributable to distraction by these devices. In 2008 FRA issued Emergency Order No. 26 restricting the on-duty use of cellular telephones and other electronic devices. This FRA action was in part a response to the September 12, 2008 Chatsworth accident, which resulted in 25 deaths, numerous injuries, and more than $7 million in damages. The BLET and the UTU filed a Petition for Review of that Order citing some valid concerns. FRA is now proposing to codify most of the requirements of the Order with some modifications to accommodate changes previously recommended by a Petition for Review of that Order as well as a number of amendments that FRA believes are appropriate.

FRA is certifying that the proposed rule will result in "no significant economic impact on a substantial number of small entities." The reasons for this certification are explained in the following section of this preamble.

1. Description of Regulated Entities and Impacts

The "universe" of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this NPRM. In this case, the "universe" is comprised solely of small railroads.

"Small entity" is defined in 5 U.S.C. 601 (Sec. 601). Sec. 601(3) defines "small entity" as having the same meaning as "small business concern" under Sec. 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Sec. 601(4) likewise includes within the definition of "small entities" not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations. Additionally, Sec.601(5) defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates "size standards" for small entities. It provides that the largest a for-profit railroad business firm may be and still be classified as a "small entity" is 1,500 employees for "Line-Haul Operating" railroads, and 500 employees for "Short-Line Operating" railroads.[10]

SBA size standards may be altered by Federal agencies in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.[11] Currently, the revenue requirement is $20 million or less in annual operating revenue, adjusted annually for inflation ($32,113,449 for 2008). This threshold is based on the Surface Transportation Board's threshold for a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.[12] FRA is using this definition for this rulemaking.

Approximately 700 railroads meet the criteria for small entity and report operational data to FRA. We are using this as our estimate of the universe of small entities that could be directly impacted by the proposed rule. Many of these railroads rely on cell phones for train operations.

Like EO 26, the proposed rule contains exceptions that would allow railroads that have less than 400,000 annual employee hours and that rely on wireless communication devices for certain train operations to continue to do so, with the same restriction that such usage be limited to performing the employees' railroad duties. The primary benefactors of this flexibility are small railroads. FRA is clarifying that the exception in the Order for railroad operating employees to use a railroad-supplied or railroad-authorized electronic device to conduct train or switching operations "under conditions authorized under 49 CFR Part 220" is intended to accommodate small railroad

[10] "Table of Size Standards," U.S. Small Business Administration, January 31, 1996, 13 CFR Part 121. *See also* NAICS Codes 482111 and 482112.

[11] *See* 68 FR 24891, May 9, 2003.

[12] For further information on the calculation of the specific dollar limit, *see* 49 CFR part 1201.

operations. The locomotives of the trains exempt from the requirement to have a working radio on the lead locomotive do not operate at high speeds, do not handle regular passenger traffic, are only permitted to operate over joint territory in specific, low-speed circumstances, and must have working wireless communications aboard the controlling locomotive of trains containing placarded hazardous material loads.

The proposed rule contains additional flexibility that would reduce the impact relative to EO 26. Having considered the Petition for Review of the Order, FRA is proposing to (1) Allow deadheading railroad operating employees who are not in the cab of a controlling locomotive to use electronic devices if that use does not interfere with an employee's personal safety or performance of safety-related duties; (2) allow use of cameras to document safety hazards or violations, except in the cab of the controlling locomotive of a moving train; and (3) exclude stand-alone calculators from all restrictions within this subpart as long as the calculator is used for an authorized business purpose and does not interfere with the performance of any employee's safety-related duties. In addition, FRA is proposing an exception for medical devices to encompass both devices that enhance an ability to perform safety-related tasks, such as hearing aid, and other devices that protect an employee's health and well-being.

In general, small railroad costs associated with compliance with EO 26 would continue to accrue under FRA's proposal. Additional burden to such railroads would come from the requirement to provide instruction to its operating employees on the substance of the proposed regulation as well as the need to update their written programs to qualify its operating employees for compliance with operating rules implementing the requirements proposed. FRA anticipates that this instruction will be achieved through means such as distribution of written materials to employees, job briefings by supervisors or roving instructors, and question and answer services. FRA estimates that the cost of such instruction will come to about 15 minutes per employee in the first year of the rule. Approximately 91,000 train and engine employees would be impacted, and about 20 percent of these would be small railroad employees. Assuming a cost per hour of employee trained of $43.37, the total cost of this additional instruction would be approximately $200,000 for small railroads or an average of $300 per railroad. Revision of programs is not expected to entail more than one labor hour per railroad. These two one-time costs would likely not significantly burden any small railroads.

Additional railroad costs transferred from EO26 include the costs associated with performing operational tests and conducting periodic training. Given that operational tests and training associated with this regulation would be conducted with other required operational testing and training, the additional annual cost will total about as much as the cost in the first year for instruction and program revision. Again, this cost would likely not significantly burden small railroads.

Because this rule would apply to all small railroads, we have concluded that a substantial number of small entities will be impacted. However, the overall impact on small railroads is not expected to be significant. FRA believes that the costs to small railroads associated with the proposed rule are not significant and are very similar to those currently incurred under EO 26. FRA requests comments on all aspects of this analysis.

2. Certification

Pursuant to the Regulatory Flexibility Act, the Federal Railroad Administration Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads could be affected by the proposed rule, they would not be significantly impacted.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new and current information collection requirements, and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
220.8—Waivers	728 Railroads	6 petitions	1 hour	6 hours.
220.25—Instruction in Proper Use of Radio Communication.	728 Railroads	91,000 trained Employees.	30 minutes	45,500 hours.
—Subsequent Years	728 Railroads	12,540 trained Employees.	30 minutes	6,270 hours.
—Operational Testing of Employees	728 Railroads	100,000 tests	5 minutes	8,333 hours.
220.37—Testing of Radios and Wireless Devices.	728 Railroads	780,000 tests	30 seconds	6,500 hours.
220.61—Transmission of Mandatory Directives:				
—Copying of Mandatory Directives	728 Railroads	7,200,000 copies	1.5 minutes	180,000 hours.
—Marking Mandatory Directives	728 Railroads	624,000 marks	15 seconds	2,600 hours.
NEW REQUIREMENTS				
220.307—Use of Railroad-Supplied Electronic Device as Specified in Writing.	728 Railroads	728 amended RR Op. codes.	1 hour	728 hours.
—Engineer and Train Crew Briefings To Use RR-Supplied Electronic Device Inside/Outside of Locomotive Cab.	91,000 Employees	5,460,000 briefings	1 minute	91,000 hours.
220.313—Instruction: Railroad Written Program of Instruction.	728 Railroads	728 amended programs.	1 hour	728 hours.
—Implementation: Training of Employees.	91,000 Employees	91,000 trained Employees.	15 minutes	22,750 hours.
—Records: Successful Completion of Training.	728 Railroads	91,000 records	5 minutes	7,583 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Approval Process: Disapproval of RR Written Program of Instruction or Written Response in Support of Program.	728 Railroads	6 revised programs/ written resp.	60 minutes	6 hours.
220.315—Operational Tests/Inspections—Revision of RR Program of Operational Tests and Inspections Under Part 217 To Include This Subpart.	728 Railroads	Burden Incl. Under OMB No. 2130–0035.	Burden Incl. Under OMB No. 2130–0035.	Burden Incl. Under OMB No. 2130–0035.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, FRA Office of Safety, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone, FRA Office of Administration, Information Clearance Officer, at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following addresses: *robert.brogan@dot.gov*; *kimberly.toone@dot.gov.*

Written comments may also be sent to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget at 725 17th St., NW., Washington, DC 20503 or sent electronically via e-mail at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated this NPRM in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this NPRM that might trigger the need for a more detailed environmental review. As a result, FRA finds that this NPRM is not a major Federal action significantly affecting the quality of the human environment.

E. Federalism Implications

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety or security hazard that is not incompatible with a Federal law, regulation, or order, and that does not unreasonably burden interstate commerce. This NPRM proposes a regulation that is related to railroad safety and, accordingly, is intended to result in a final rule that has preemptive effect pursuant to section 20106. The requirements of the final rule would be intended to establish a uniform Federal safety standard that must be met, and State requirements covering the same subject would be displaced, whether those standards are in the form of State statutes, regulations, local ordinances, or other forms of State law, including common law. This is consistent with past practice at FRA, and within the Department of Transportation.

When FRA prescribes a final rule in this rulemaking, the final rule would not preempt an action under State law

seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care that would be established by the final rule, including a plan or program that would be required by the final rule. Provisions of a plan or program that exceed the requirements of the final rule would not be included in the Federal standard of care. This is also consistent with past practice at FRA, and within the Department of Transportation.

FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132. This NPRM will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among various levels of government. This NPRM will not have federalism implications that impose any direct compliance costs on State and local governments. Consequently, FRA concludes that this NPRM has no federalism implications.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $141,300,000 or more in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and Tribal governments and the private sector. This NPRM will not result in the expenditure, in the aggregate, of $141,300,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." *See* 66 FR 28355 (May 22, 2001). Under the Executive Order a "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a "significant energy action" within the meaning of the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's 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 published in the **Federal Register** on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

I. Executive Order 12988 (Civil Justice Reform)

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

List of Subjects in 49 CFR Part 220

Communications, Penalties, Railroads, Railroad safety.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 220 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 220—[AMENDED]

1. The authority citation for part 220 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20103, note, 20107, 21301–21302, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Revise § 220.1 to read as follows:

§ 220.1 Scope.

This part prescribes minimum requirements governing the use of wireless communications in connection with railroad operations. In addition, this part sets forth prohibitions, restrictions, and requirements that apply to the use of personal and railroad-supplied cellular telephones and other electronic devices. So long as these minimum requirements are met, railroads may adopt additional or more stringent requirements.

3. Section § 220.5 is amended by adding definitions for "Earpiece," "Electronic device," "Fouling a track," "In deadhead status," "Medical device," "Personal electronic device," "Railroad operating employee," "Railroad-supplied electronic device," and "Switching operation," and revising the definition of "Train" to read as follows:

§ 220.5 Definitions.

* * * * *

Earpiece means a small speaker that is inserted in or held next to the ear for use in transmitting sounds related to an electronic device.

Electronic device means an electronic or electrical device used to conduct oral, written, or visual communication; place or receive a telephone call; send or read an electronic mail message or text message; look at pictures; read a book or other written material; play a game; navigate the Internet; navigate the physical world; play, view, or listen to a video; play, view, or listen to a television broadcast; play or listen to a radio broadcast other than a radio broadcast by a railroad; play or listen to music; execute a computational function; or, perform any other function that is not necessary for the health or safety of the person and that entails the risk of distracting the employee or another railroad operating employee from a safety-related task. This term does not include—

(1) Electronic control systems and information displays within the locomotive cab or on a remote control transmitter necessary for a locomotive engineer to operate a train or conduct switching operations; or

(2) A digital watch whose only purpose is as a timepiece.

* * * * *

Fouling a track means the placement of an individual in such proximity to a track that the individual could be struck by a moving train or other on-track equipment, or in any case is within four feet of the nearest rail.

* * * * *

In deadhead status means awaiting or in deadhead transport from one point to another as a result of a railroad-issued verbal or written directive.

* * * * *

Medical device means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article (including a component part), or accessory that is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease or other conditions.

Personal electronic device means an electronic device that was not provided to the railroad operating employee by the employing railroad for a business purpose.

Railroad operating employee means a person performing duties subject to—

(1) 49 U.S.C. 21103, "Limitation on duty hours of train employees" (*i.e.,* an individual engaged in or connected with the movement of a train, including a hostler);

(2) 49 U.S.C. 21103 as it was in effect on October 15, 2008, the day before the enactment of the Rail Safety Improvement Act of 2008, Public Law 110–432, Div. A, 122 Stat. 4848, October 16, 2008 (*i.e.,* train employees providing commuter rail passenger transportation or intercity rail passenger transportation as defined in 49 U.S.C. 24102); or

(3) Any Federal Railroad Administration regulations prescribed pursuant to 49 U.S.C. 21109 governing hours of service related to train employees.

* * * * *

Railroad-supplied electronic device means an electronic device provided to a railroad operating employee by the employing railroad for an authorized business purpose.

* * * * *

Switching operation means the classification of freight cars according to commodity or destination; assembling of cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing of locomotives and cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute a train movement.

* * * * *

Train for purposes of Subparts A and B, means one or more locomotives coupled with or without cars, requiring an air brake test in accordance with 49 CFR Part 232 or Part 238, except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains. The term, for purposes of Subpart C, means:

(1) A single locomotive,

(2) Multiple locomotives coupled together, or

(3) One or more locomotives coupled with one or more cars.

* * * * *

4. Add a new Subpart C to part 220 to read as follows:

Subpart C—Electronic Devices

Sec.
220.301 Purpose and application.
220.303 General use of electronic devices.
220.305 Use of personal electronic devices.
220.307 Use of railroad-supplied electronic devices.
220.309 Permitted uses.
220.311 Railroad operating employees in deadhead status.
220.313 Instruction.
220.315 Operational tests and inspections; further restrictions on use of electronic devices.

Subpart C—Electronic Devices

§ 220.301 Purpose and application.

(a) The purpose of this subpart is to reduce safety risks resulting from railroad operating employees being distracted by the inappropriate use of electronic devices, such as mobile telephones (cell phones or cellular phones) and laptop computers.

(b) The applicability of this subpart is governed by § 220.3; this subpart, however, does not affect the use of working wireless communications pursuant to Subparts A and B.

(c) The restrictions of this Subpart C do not apply—

(1) To the working radio; or

(2) When a working radio failure occurs and an electronic device is used in accordance with railroad rules.

§ 220.303 General use of electronic devices.

A railroad operating employee shall not use an electronic device if that use would interfere with the employee's or another employee's performance of safety-related duties.

§ 220.305 Use of personal electronic devices.

A railroad operating employee must have each personal electronic device turned off with any earpiece removed from the ear—

(a) When on a moving train;

(b) When any member of the crew is—

(1) On the ground, or

(2) Riding rolling equipment during a switching operation; or

(c) When any railroad employee is assisting in preparation of the train for movement.

§ 220.307 Use of railroad-supplied electronic devices.

(a) *General restriction.* A railroad operating employee may use a railroad-supplied electronic device only for an authorized business purpose as specified by the railroad in writing.

(b) *Use by locomotive engineers operating controls.* A locomotive engineer operating the controls of a train shall not use a railroad-supplied electronic device—

(1) When on a moving train;

(2) When any member of the crew is—

(i) On the ground, or

(ii) Riding rolling equipment during a switching operation; or

(3) When any railroad employee is assisting in preparation of the train for movement.

(c) *Use in freight and passenger locomotive cabs generally.* In addition to the restrictions on locomotive engineers described in paragraph (b) of this section, a railroad operating employee who is not in deadhead status shall not use a railroad-supplied electronic device in the cab of a controlling locomotive except for a mobile telephone or remote computing device which the employee may use only if, before use—

(1) A safety briefing that includes all crewmembers is held; and

(2) All crewmembers agree that it is safe to use the railroad-supplied mobile telephone or remote computing device.

(d) *Use outside freight locomotive cabs.* A freight train crewmember who is not in deadhead status may use a railroad-supplied electronic device outside the cab of a controlling freight locomotive only if all of the following conditions are met:

(1) The crewmember is not fouling a track;

(2) Operations are suspended; and

(3) All members of the crew have been briefed that operations are suspended.

§ 220.309 Permitted uses.

Notwithstanding any other limitations in this subpart, a railroad operating employee may use the following, if that use does not interfere with any employee's performance of safety-related duties—

(a) The digital storage and display function of an electronic device to refer to a railroad rule, special instruction, timetable, or other directive, if such use is authorized under a railroad operating rule or instruction.

(b) An electronic device as necessary to respond to an emergency situation involving the operation of the railroad or encountered while performing a duty for the railroad.

(c) An electronic device to take a photograph or video to document a safety hazard or a violation of a rail safety law, regulation, order, or standard, provided that—

(1) The device's primary function is as a camera for taking still pictures or

videos (A camera that is part of a cell phone or other multi-functional electronic device is not included in this exception.);

(2) The camera, unless otherwise permitted, is turned off immediately after the documentation has been made; and

(3) If the camera is used in the cab of a moving train, the use is only by a crewmember other than the locomotive engineer.

(d) A stand-alone calculator if used for an authorized business purpose.

(e) A medical device that is consistent with the railroad's standards for medical fitness for duty.

(f) A wireless communication device to conduct train or switching operations if the railroad operating employee is part of a crew assigned to a train that is exempt from the requirement of a working radio under § 220.9(b) when the employing railroad has fewer than 400,000 annual employee work hours.

§ 220.311 Railroad operating employees in deadhead status.

(a) Notwithstanding other restrictions in this subpart, a railroad operating employee who is in deadhead status and not inside the cab of a controlling locomotive may use an electronic device only if the employee is not using the device in such a way that interferes with any employee's personal safety or performance of safety-related duties.

(b) A railroad operating employee who is in deadhead status and located inside the cab of a controlling locomotive must have each electronic device turned off with any earpiece removed from the ear—

(1) When on a moving train;

(2) When any member of the crew is—

(i) On the ground, or

(ii) Riding rolling equipment during a switching operation; or

(3) When any railroad employee is assisting in preparation of the train for movement.

§ 220.313 Instruction.

(a) *Program.* Beginning [90 (or 120 where indicated) DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], each railroad shall maintain a written program of instruction, training, and examination of each railroad operating employee and each supervisor of the railroad operating employee on the meaning and application of the railroad's operating rules implementing the requirements of this subpart if these requirements are pertinent to the employee's duties. If all requirements of this subpart are satisfied, a railroad may consolidate any portion of the instruction, training, or examination required by this subpart with the program of instruction required under § 217.11 of this chapter.

(1) The written program of instruction, training, and examination shall address the requirements of this subpart, as well as consequences of noncompliance.

(2) The written program of instruction, training, and examination shall include, but is not limited to, an explanation of the following:

(i) When a railroad operating employee must have personal electronic devices turned off with the earpiece removed from the ear as required by this subpart.

(ii) If a railroad supplies an electronic device to its railroad operating employees, when a railroad operating employee may use such a device. The employee must be trained on what constitutes an authorized business purpose.

(iii) The potential penalties and other consequences of committing a violation of this subpart, both those imposed by FRA and those imposed by the railroad, as well as any distinction between the requirements of this subpart and any more stringent requirements imposed by the railroad and the related distinction between the two sets of potential consequences.

(b) *Implementation schedule.* Each employee performing duties subject to the requirements in this subpart shall be initially trained prior to [90 (or 120 where indicated) DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(1) Beginning [90 (or 120 where indicated) DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless the employee has been trained on these rules within the previous three years.

(2) The records of successful completion of instruction, examination and training required by this section shall document the instruction of each employee under this subpart.

(c) *Records.* Written records documenting successful completion of instruction, training, and examination of each employee and of his or her supervisors shall be made and shall be retained at the railroad's system headquarters and at the division headquarters for each division where the employee is assigned for three calendar years after the end of the calendar year to which they relate and made available to representatives of FRA for inspection and copying during normal business hours. Each railroad to which this part applies is authorized to retain a program, or any records maintained to prove compliance with such a program, by electronic recordkeeping in accordance with §§ 217.9(g) and 217.11(c) of this chapter.

(d) *Approval process.* Upon review of the program of instruction, training, and examination required by this section, the Associate Administrator for Railroad Safety/Chief Safety Officer may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval.

(1) If the Associate Administrator for Railroad Safety/Chief Safety Officer disapproves the program, the railroad has 35 days from the date of the written notification of such disapproval to—

(i) Amend its program and submit it to the Associate Administrator for Railroad Safety/Chief Safety Officer for approval; or

(ii) Provide a written response in support of the program to the Associate Administrator for Railroad Safety/Chief Safety Officer, who informs the railroad of FRA's final decision in writing.

(2) A failure to submit the program with the necessary revisions to the Associate Administrator for Railroad Safety/Chief Safety Officer in accordance with this paragraph is considered a failure to implement a program under this subpart.

§ 220.315 Operational tests and inspections; further restrictions on use of electronic devices.

(a) The railroad's program of operational tests and inspections under Part 217 of this chapter shall be revised as necessary to include this subpart and shall specifically include a minimum number of operational tests and inspections, subject to adjustment as appropriate.

(b) When conducting a test or inspection under Part 217 of this chapter, a railroad officer, manager, or supervisor is prohibited from calling the personal electronic device or the railroad-supplied electronic device used by a locomotive engineer while the train to which the locomotive engineer is assigned is moving.

(c) When an operational test involves stopping a train, interrupting a switching operation, or interrupting an activity involving another employee involved with the movement of the train (*e.g.,* through the use of a banner, signal, or radio communication), the limitations on the use of electronic devices set forth in this subpart

continue to be in effect although the train movement, switching operation, or other activity is temporarily suspended.

Issued in Washington, DC, on May 7, 2010.

Karen Rae,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 2010–11484 Filed 5–17–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0054]
[MO 92210–0–0009–B4]

RIN 1018–AW20

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Ambrosia pumila (San Diego ambrosia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our August 27, 2009, proposed rule to designate critical habitat for *Ambrosia pumila* (San Diego ambrosia). We also announce the availability of the draft economic analysis (DEA), revisions to proposed critical habitat, and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed critical habitat, the associated DEA, the proposed addition of three subunits based on new information, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: The comment period for the proposed rule published August 27, 2009, at 74 FR 44238, is reopened. We will consider comments from all interested parties received or postmarked on or before June 17, 2010. Please note that if you use the *Federal eRulemaking Portal* (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit comments by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments on docket number FWS–R8–ES–2009–0054.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS–R8–ES–2009–0054; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone (760) 431–9440; facsimile (760) 431–5901. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposed rule is based on the best scientific data available and will be accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, and any other interested party during this reopened comment period on the proposed rule to designate critical habitat for *Ambrosia pumila* (San Diego ambrosia) that was published in the **Federal Register** on August 27, 2009 (74 FR 44238), including comments on the addition of subunits 3B, 4D, and 5B to the proposed critical habitat; the DEA of the revised proposed designation; and the amended required determinations provided in this document. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation is not prudent.

(2) Specific information that may assist us in clarifying or identifying more specific primary constituent elements (PCEs). Available information does not identify a consistent pattern in specific life-history requirements and habitat types where this species is found. For these reasons, the PCEs in the proposed rule are broad and based on our assessment of the ecosystem settings in which the species has most frequently been detected and our best assessment regarding its life-history requisites. We specifically seek information that may assist us in defining those physical and biological features essential to the conservation of the species which may require special management considerations or protection, or in identifying specific areas outside the geographical area occupied by the species at the time it was listed that may be essential for the conservation of the species. In particular, answers to the following questions may be helpful to clarify or identify more specific PCEs of *A. pumila* habitat:

• Does the species reproduce via seed? If so, does the species rely on some aspect of its environment to trigger seed germination?

• What are the key factors determining why the species occupies the particular areas it occupies (but not other areas with the same habitat type)? For example, what role does proximity to waterways or vernal pools play?

(3) Specific information on:

• The amount and distribution of areas proposed as critical habitat for *Ambrosia pumila*;

• Areas occupied at the time of listing that contain features essential to the conservation of the species and why we should include or exclude these areas in the designation; and

• Areas not occupied at the time of listing that are essential for the conservation of the species and why.

(4) How the proposed critical habitat boundaries could be refined to more closely circumscribe the areas identified as essential. We also seek recommendations to improve the methodology used to delineate the areas proposed as critical habitat; we especially seek comments regarding how we might more accurately determine how much area beyond the surface covered by above-ground stems that we need to include for each occurrence of *Ambrosia pumila* in the critical habitat designation to ensure that habitat areas include unseen underground portions (rhizomes) of *A. pumila* plants (see step number 4 in the **Methods** section of the proposed critical habitat rule (74 FR 44246, August 27, 2009)).

(5) Land use designations and current or planned activities in the areas proposed as critical habitat and their possible impacts on the species and the proposed critical habitat.

(6) Any special management considerations or protections that the physical and biological features essential to the conservation of *Ambrosia pumila* may require.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(8) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(9) Whether the benefit of an exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act, in particular for those areas covered by the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP), and Subarea Plans (City of San Diego and County of San Diego) under the San Diego Multiple Species Conservation Program (MSCP), and specific reasons why.

(10) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate.

If you submitted comments or information on the proposed rule (74 FR 44238) during the initial comment period from August 27, 2009, to October 26, 2009, please do not resubmit them. These comments are included in the public record for this rulemaking and we will fully consider them in the preparation of our final determination. Our final determination concerning the critical habitat for *Ambrosia pumila* will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas within the proposed critical habitat designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning our proposed rule, the associated DEA, the additional subunits we are proposing in this document, and our amended required determinations by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used to prepare this notice, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the original proposed designation of critical habitat (74 FR 44238) and the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0054, or by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for *Ambrosia pumila* in this notice. For more information on previous Federal actions concerning *A. pumila*, refer to the 2009 proposed designation of critical habitat published in the **Federal Register** on August 27, 2009 (74 FR 44238), or contact the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If we finalize the proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if any activity they fund, authorize, or carry out may affect designated critical habitat.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based on the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, and any other relevant impact of specifying any particular area as critical habitat.

We prepared a DEA (Industrial Economics, Inc. 2010) that identifies and analyzes the potential, probable economic impacts associated with the proposed designation of critical habitat. Additionally, the DEA looks retrospectively at costs incurred since the July 2, 2002 (67 FR 44372), listing of *A. pumila* as an endangered species. The DEA quantifies the probable economic impacts of all potential conservation efforts for *A. pumila*; some of these costs will likely be incurred regardless of whether we finalize the critical habitat rule, as they are attributable to the listing of the species under the Act. The economic impact of the proposed critical habitat designation is analyzed by comparing a "with critical habitat" scenario with a "without critical habitat" scenario. The "without critical habitat" scenario represents the baseline for the economic analysis and considers protections already in place for the species (for example, protections resulting from the Federal listing, and protections provided by other Federal, State, and local regulations). The baseline costs, therefore, represent the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for *A. pumila*. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat relative to areas that may be excluded under section 4(b)(2) of the Act. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat.

The DEA (made available with the publication of this document and referred to throughout this document

unless otherwise noted) estimates the foreseeable economic impacts of the proposed critical habitat designation for *Ambrosia pumila*. The economic analysis identifies potential incremental costs as a result of the proposed critical habitat designation, which are those costs attributed to critical habitat over and above those baseline costs coextensive with listing. It also discusses potential benefits that may be derived from the designation in a qualitative manner.

Baseline economic impacts are those that result from listing and other conservation efforts for *Ambrosia pumila*. Future baseline impacts in the areas proposed as critical habitat are entirely attributed to development activities; no future baseline impacts were attributed to transportation construction and maintenance. Total future baseline impacts are estimated to be $20.6 million ($1.9 million annualized using a 7 percent discount rate over the next 20 years (2010-2029)) in areas proposed as critical habitat (Industrial Economics, Inc. 2010, p. ES-6).

All incremental impacts attributed to the proposed critical habitat designation are expected to be related to development; no future incremental impacts were attributed to transportation construction and maintenance. The DEA estimates total potential incremental economic impacts in areas proposed as critical habitat over the next 20 years (2010-2029) to be $118,750 ($11,203 annualized using a 7 percent discount rate) (Industrial Economics, Inc. 2010, p. ES-7).

In this notice, we propose to add 338 acres (ac) (137 hectares (ha)) (Subunits 3B, 4D, and 5B) to the 802 ac (324 ha) that we proposed as critical habitat on August 27, 2009 (74 FR 44238), bringing the total to 1,140 ac (461 ha) of proposed critical habitat for *Ambrosia pumila* (see **Changes to Proposed Critical Habitat** below). The additional acreage in Subunits 3B, 4D, and 5B have not been assessed in the DEA announced in this notice. However, all incremental costs estimated in the DEA for all properties within the originally proposed critical habitat are attributed to the minor administrative costs of conducting adverse modification analyses during jeopardy analyses ($448 annualized using a 7 percent discount rate per property). Because the three newly proposed subunits are all occupied by the species, we only anticipate minor incremental costs associated with adverse modification analyses conducted during jeopardy analyses. For this reason, we do not expect the incremental costs for the newly proposed areas to exceed those estimated for properties included in the DEA. The final economic analysis will reflect the baseline and incremental economic impacts of critical habitat designation for the entire 1,140 ac (461 ha).

The DEA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (for example, lost economic opportunities associated with restrictions on land use). The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The DEA describes economic impacts of *Ambrosia pumila* conservation efforts associated with residential and commercial development, and transportation-related construction and maintenance. The DEA also analyzes the economic impact on small entities and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector (see *Regulatory Flexibility Act (5 U.S.C. 601 et seq.*).

Changes to Proposed Critical Habitat

In this document, we are proposing additional subunits to *Ambrosia pumila* critical habitat in Units 3, 4, and 5, which were initially identified and described in the proposed rule that was published in the **Federal Register** on August 27, 2009 (74 FR 44238). We obtained data after the publication of the proposed rule informing us of the existence of one occurrence not previously known to us (Subunit 3B), and confirming the continued existence of an occurrence thought to be extirpated (Subunit 5B). Based on a public comment received during the public comment period, we re-evaluated all available data for *A. pumila* occurrences throughout the range of the species. As a result of our re-evaluation, we determined an additional area in San Diego County (Subunit 4D) meets the definition of critical habitat for *A. pumila* because, although it is small in size (approximately 20 ac (8 ha)), it is occupied, and otherwise meets the definition of critical habitat and the criteria for inclusion in critical habitat as set forth in our proposal (see *Subunit 4D: Gird Road/Monserate Hill* below). The purpose of the revisions described below is to better delineate the areas that meet the definition of critical habitat for *A. pumila.* These three additional subunits were within the geographic range occupied by the species at the time it was listed and contain the physical and biological features essential to the conservation of the species. Subunits 3B, 4D, and 5B were not included in the proposed rule (74 FR 44238, August 27, 2009); therefore, this document includes the full descriptions and maps for these subunits. As a result of these proposed additions, the overall area proposed as critical habitat for *A. pumila* is 1,140 ac (461 ha), an increase of 338 ac (137 ha) from the 802 ac (324 ha) that we proposed as critical habitat on August 27, 2009 (74 FR 44238).

Subunit 3B: Murrieta Creek

We were not aware of the Murrieta Creek occurrence (Subunit 3B) of *Ambrosia pumila* when we developed the proposed rule to designate critical habitat for the species (74 FR 44238; August 27, 2009); therefore, this occurrence was not included in the proposed rule. Based on new information obtained from the California Natural Diversity Database (CNDDB 2010), we are proposing Subunit 3B as critical habitat because this area is within the geographical area occupied by the species at the time of listing, contains the physical and biological features that are essential to the conservation of the species, and meets our criteria for inclusion in critical habitat. We have concluded that this area was occupied at the time the species was listed because individuals of species with a clonal growth habit like *A. pumila* are usually long-lived (Watkinson and White 1985, pp. 44–45; Tanner 2001, p. 1980). To our knowledge, the area had not been surveyed for *A. pumila* previously, and we have no reason to believe the plant was imported or had dispersed into these areas from other areas after *A. pumila* was listed. Occurrences identified since listing were likely in existence for many years and were only recently detected due to increased awareness of this species. We mapped the boundary of this subunit using our current mapping methodology as described in the **Methods** section of the proposed rule (74 FR 44245–44247, August 27, 2009). Unit 3 as described in the proposed rule (74 FR 44248–44249) is now Subunit 3A.

Subunit 3B is located in the City of Temecula in southwestern Riverside County, California. This subunit is near the western end of 1st Street, just west of Murrieta Creek. Subunit 3B consists

of approximately 44 ac (18 ha) of privately owned land. This subunit meets the definition of critical habitat for this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see "*Genetics*" section of the proposed rule (74 FR 44241)). Subunit 3B contains physical and biological features that are essential to the conservation of *Ambrosia pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are out-competing *A. pumila* for resources, from human foot and vehicle traffic that may occur in the area, and from development. Please see the "*Special Management Considerations or Protection*" section of the proposed rule (74 FR 44244–44245, August 27, 2009) for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 4D: Gird Road/Monserate Hill

We re-evaluated all information available for *Ambrosia pumila* occurrences and determined that the Gird Road/Monserate Hill area (Subunit 4D) meets the definition of critical habitat, despite its small size relative to other proposed units. We are proposing Subunit 4D as critical habitat because this area is within the geographical area occupied by the species at the time of listing, contains the physical and biological features essential to the conservation of the species, and meets the criteria for inclusion in critical habitat. We mapped the boundary of this subunit using our current mapping methodology as described in the **Methods** section of the proposed rule (74 FR 44245–44247, August 27, 2009).

Subunit 4D is located in the Fallbrook area of northern San Diego County, California. This subunit is adjacent to the north side of State Route 76, almost the same distance from both Gird Road (to the west) and Monserate Hill Road (to the east). Subunit 4D consists of approximately 20 ac (8 ha) of privately owned land and 1 ac (0.5 ha) of State-owned land for a total of approximately 21 ac (9 ha). This subunit meets the definition of critical habitat for the species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see "*Genetics*" section of the proposed rule (74 FR 44241)). Subunit 4D contains physical and biological features that are essential to the conservation of *Ambrosia pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are out-competing *A. pumila* for resources, from foot and vehicle traffic in the area, and from development and road maintenance. Please see the "*Special Management Considerations or Protection*" section of the proposed rule (74 FR 44244–44245, August 27, 2009) for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 5B: Lake Hodges West – Crosby Estates

We were unaware that the Crosby Estates occurrence (Subunit 5B) of *Ambrosia pumila* is extant when we developed the proposed rule to designate critical habitat for the species (74 FR 44238, August 27, 2009); therefore, this area was not included in the proposed rule. This occurrence was extant at the time of listing, but was thought to have been extirpated. We have since obtained information (The Crosby at Rancho Santa Fe Habitat Management Plan Annual Report 2008 (Rincon Consultants, Inc. 2008)) confirming this occurrence is extant and viable. Based on this information, we are proposing Subunit 5B as critical habitat because it is currently occupied, is within the geographical area occupied by the species at the time of listing, contains the physical and biological features that are essential to the conservation of the species, and meets the criteria for inclusion in critical habitat. We mapped the boundary of this subunit using our current mapping methodology as described in the **Methods** section of the proposed rule (74 FR 44245–44247, August 27, 2009). Unit 5 as described in the proposed rule (74 FR 44249–44250) is now Subunit 5A.

Subunit 5B is located just west of Lake Hodges in the western portion of central San Diego County, California. This subunit is on and adjacent to the west side of the Crosby National Golf Club. Subunit 5B consists of approximately 116 ac (47 ha) of privately owned land, 2 ac (1 ha) of local government owned land, and 155 ac (63 ha) of County-owned land for a total of approximately 273 ac (111 ha). This subunit is meets the definition of critical habitat for this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see "*Genetics*" section of the proposed rule (74 FR 44241)). Subunit 5B contains physical and biological features that are essential to the conservation of *Ambrosia pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit, including features within the approximately 155 ac (63 ha) portion of Subunit 5B that is conserved (57 percent), may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are out-competing *A. pumila* for resources, from human encroachment that may occur in the area, and from golf course maintenance. Please see the "*Special Management Considerations or Protection*" section of the proposed rule (74 FR 44244–44245, August 27, 2009) for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Additional Areas Currently Considered For Exclusion Under Section 4(b)(2) of the Act –Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

Under section 4(b)(2) of the Act, the proposed rule discusses approximately 263 ac (106 ha) proposed as critical habitat in Unit 1 (Subunits 1A and 1B), Unit 2, and Subunit 3A (formerly Unit 3 in the proposed rule) that we are considering whether or not to exercise our discretion to exclude from critical habitat designation. We are also considering exclusion of approximately 44 ac (18 ha) of *Ambrosia pumila*

habitat on permittee-owned or controlled lands in Subunit 3B that meet the definition of critical habitat for *A. pumila* within the Western Riverside County MSHCP plan area. We are considering exercising our discretion to exclude this subunit because the implementation of the Western Riverside County MSHCP addresses threats to *A. pumila* and features essential to its conservation through a regional planning effort and outlines species-specific objectives and criteria for the conservation of *A. pumila* and its habitat. No land in Subunit 3B is currently conserved by the MSHCP; however, all of the subunit falls within the Criteria Area where conservation under the habitat conservation plan (HCP) may occur (any projects in this area should be implemented through the Joint Project Review Process to ensure that the requirements of the MSHCP permit and the Implementing Agreement are properly met (Western Riverside County MSHCP, Volume 1, section 6.6.2 in Dudek 2003, p. 6–82)). Additionally, all 44 ac (18 ha) fall within our Conceptual Reserve Design where conservation is likely to occur. Please see "Exclusions Based on Habitat Conservation Plans (HCPs)" in the proposed rule (74 FR 44253–44257, August 27, 2009) for a more detailed discussion of the protections afforded to *A. pumila* by the Western Riverside County MSHCP. We will analyze the benefits of inclusion in and exclusion from critical habitat of this area under section 4(b)(2) of the Act in the final rule.

Additional Areas Currently Considered For Exclusion Under Section 4(b)(2) of the Act –San Diego Multiple Species Conservation Program (MSCP)—City and County of San Diego Subarea Plans

Under section 4(b)(2) of the Act, the proposed rule discusses 278 ac (113 ha) proposed as critical habitat in Subunit 5A (formerly Unit 5 in the proposed rule), Unit 6, and Subunits 7A, 7B, and 7C that we are considering exercising our discretion to exclude from critical habitat designation. We are also considering excluding approximately 273 ac (111 ha) of non-Federal lands in Subunit 5B that meet the definition of critical habitat for *Ambrosia pumila* within the County of San Diego MSCP Subarea Plan under section 4(b)(2) of the Act. Implementation of the County of San Diego MSCP Subarea Plan helps to address threats to the species and the features essential to its conservation through a regional planning effort rather than through a project-by-project approach, and outlines species-specific objectives and criteria for the conservation of *A. pumila* and its habitat. Approximately 184 ac (74 ha) of Subunit 5B is within the MSCP Multi-Habitat Planning Area. Please see "Exclusions Based on Habitat Conservation Plans (HCPs)" in the proposed rule (74 FR 44253–44257, August 27, 2009) for a more detailed discussion of the protections afforded to *A. pumila* by the County of San Diego MSCP Subarea Plan. We will analyze the benefits of inclusion in and exclusion from critical habitat of this area under section 4(b)(2) of the Act.

As we stated earlier, we are soliciting data and comments from the public on the DEA, all aspects of the proposed critical habitat rule (including the additions of Subunits 3B, 4D, and 5B to proposed critical habitat, and the additional areas considered for exclusion from critical habitat designation), and our amended required determinations. The final rule may differ from the proposed rule based on information we receive during the public comment periods. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

Required Determinations——Amended

In our proposed rule published in the **Federal Register** on August 27, 2009 (74 FR 44238), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (*Regulatory Planning and Review*), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 12630 (Takings), the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the information in the DEA, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, or Use), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Ambrosia pumila* would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate

for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize the proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where *Ambrosia pumila* is present, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process because *A. pumila* is listed as an endangered species under the Act.

Appendix A.1 of the DEA evaluates the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed critical habitat for *Ambrosia pumila*. The analysis is based on the estimated incremental impacts associated with the proposed rule as described in sections 1 through 3 of the DEA. The SBREFA analysis evaluates the potential for economic impacts related to project modifications on privately held developable land (Industrial Economics, Inc. p. A-3). The incremental impacts considered for the SBREFA analysis are the impacts that will affect development companies considered to be small businesses. The DEA indicates that 3 out of a total of a possible 9,222 land development companies in the counties where critical habitat is proposed would be affected by the designation of critical habitat (Industrial Economics, Inc. 2010, Appendix A, ES-8). Due to the designation of critical habitat the annual incremental impacts to these 3 small businesses will be approximately $448 each at a 7 percent discount rate (Industrial Economics, Inc. 2010, Appendix A, 3-14). We do not believe these 3 small businesses represent a substantial number of the total number of development companies or that an annual impact of $448 per company is a significant economic impact. Therefore, we do not find that the designation of critical habitat for *A. pumila* will have a significant economic impact on a substantial number of small entities.

In summary, we considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat for *Ambrosia pumila* would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in Appendix A, the DEA finds that none of these criteria are relevant to this analysis. The DEA concludes that no incremental impacts are forecast associated specifically with this rulemaking on the production, distribution, or use of energy. Therefore, designation of critical habitat for *A. pumila* is not expected to lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution). A Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," with two exceptions. First, it excludes "a condition of federal assistance." Second, it also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed designation of critical habitat for *Ambrosia pumila*, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development activities; however, these are not expected to affect small governments. Incremental impacts stemming from species conservation and development-control activities associated with this critical habitat designation are not expected to significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at

http://www.regulations.gov or by contacting the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for *Ambrosia pumila* (San Diego ambrosia), which was proposed for addition to § 17.96(a) on August 27, 2009, at 74 FR 44237, is proposed to be amended by:

a. Removing the index map at paragraph (5) and adding in its place a new index map as set forth below;

b. Revising paragraph (7)(ii);

c. Revising paragraph (8); and

d. Revising paragraph (9), to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

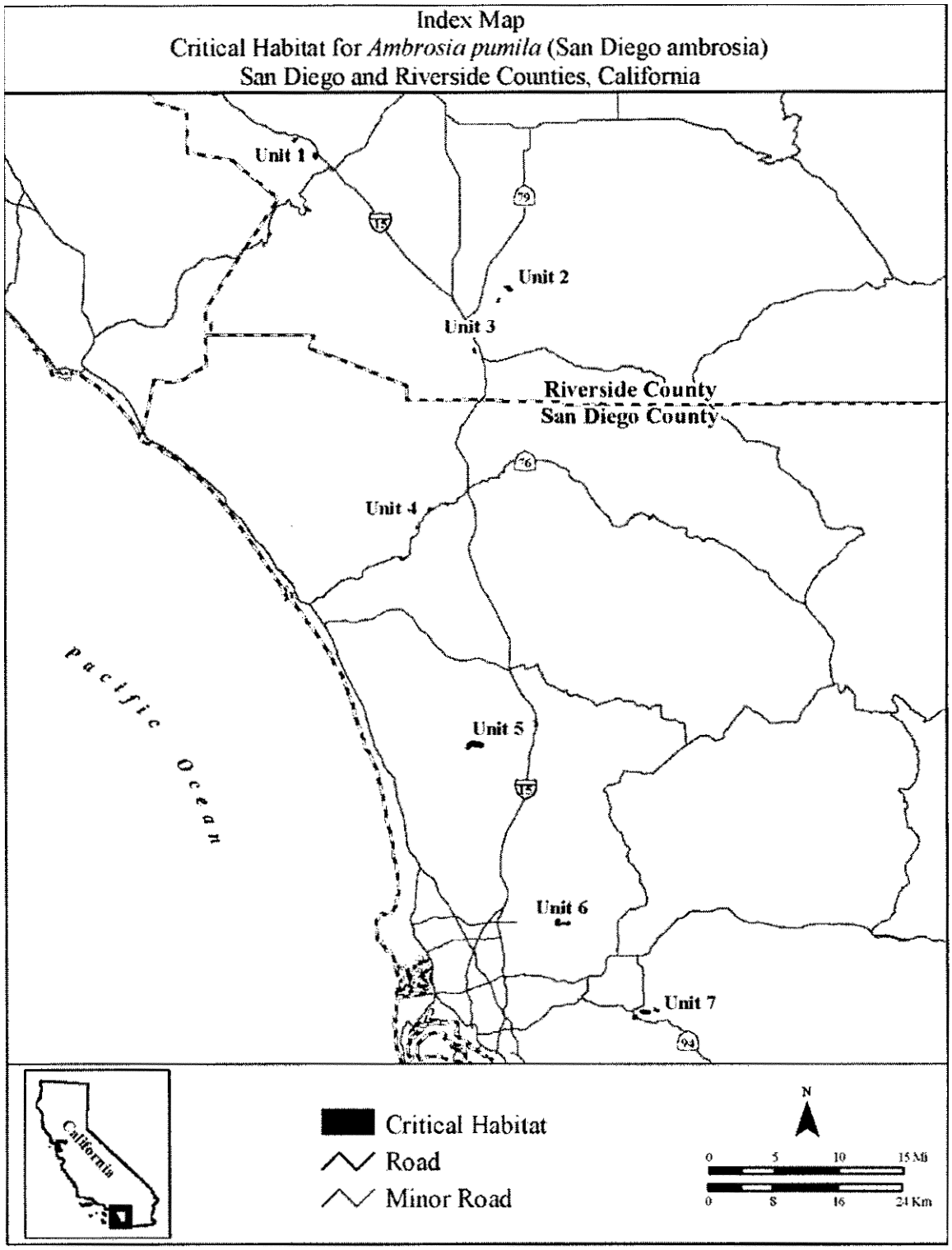
* * * * *

Family Asteraceae: *Ambrosia pumila* (San Diego ambrosia)

* * * * *

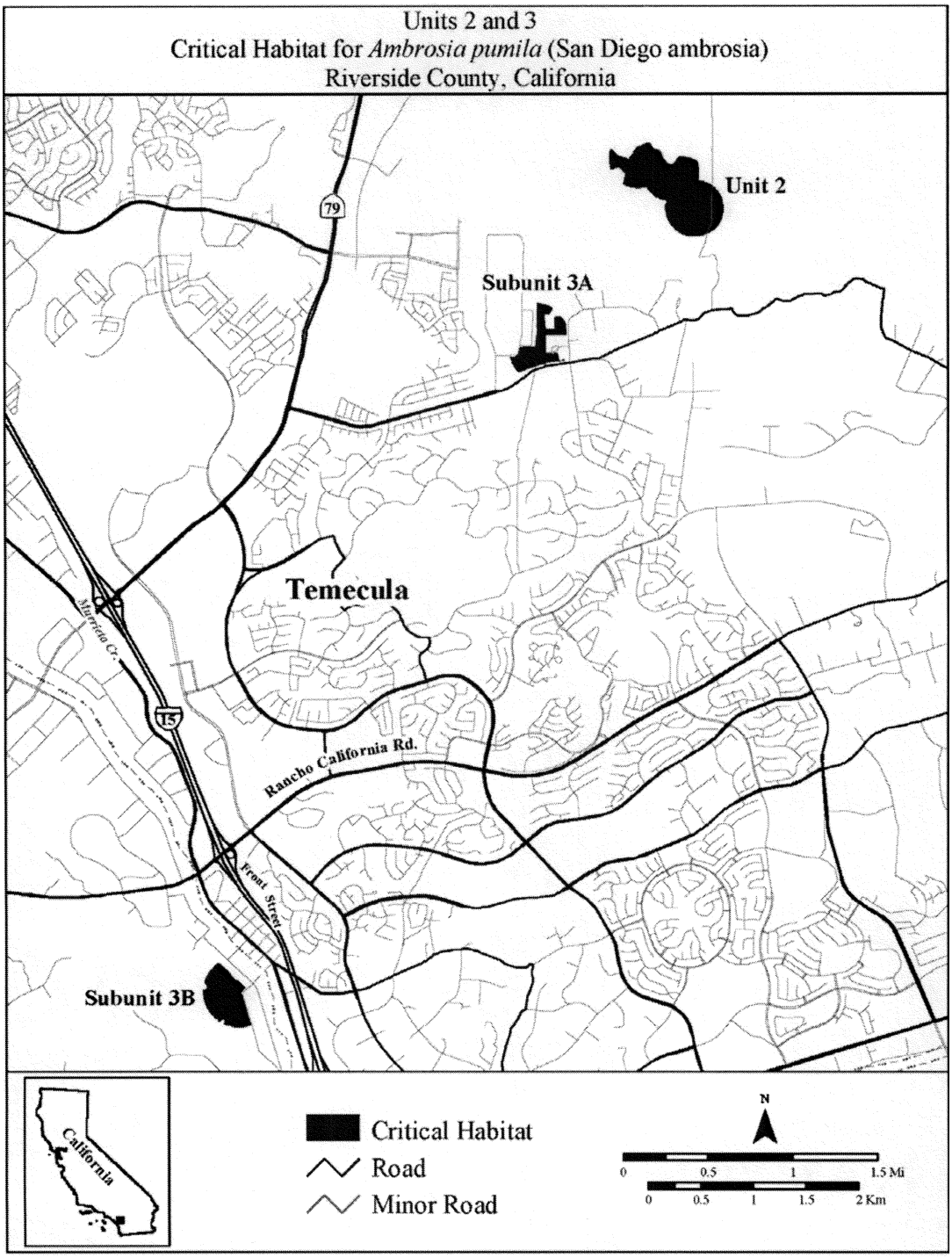
(5) * * *

BILLING CODE 4310–55–S


Index Map
Critical Habitat for *Ambrosia pumila* (San Diego ambrosia)
San Diego and Riverside Counties, California
Unit 1
Unit 2
Unit 3
Riverside County
San Diego County
Unit 4
Pacific Ocean
Unit 5
Unit 6
Unit 7
California
Critical Habitat
Road
Minor Road
N
0 5 10 15 Mi
0 8 16 24 Km

(7) * * *

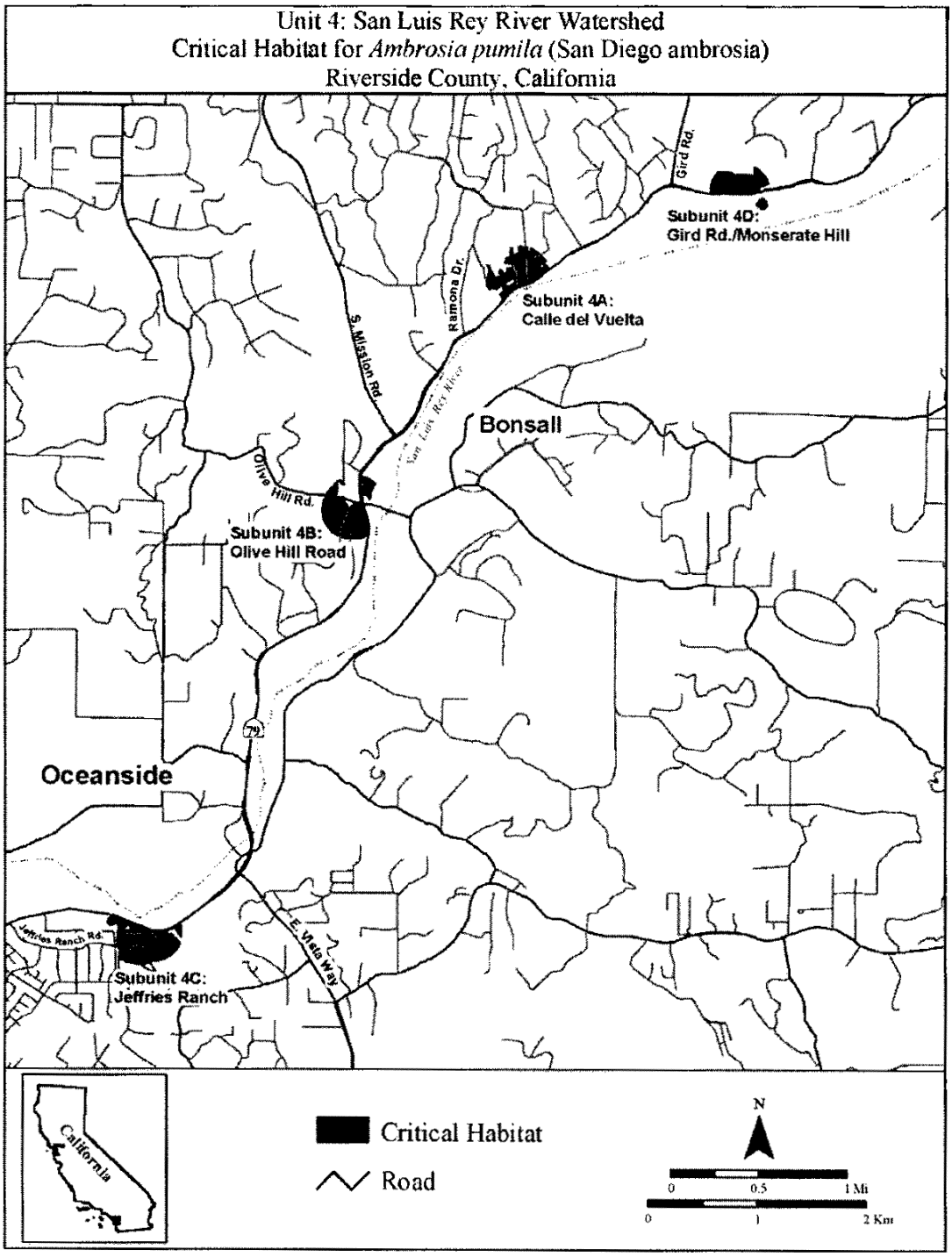
(ii) Note: Map of Units 2 and 3, with Subunits 3A and 3B, of critical habitat for *Ambrosia pumila* (San Diego ambrosia), Riverside County, California, follows:



(8) Unit 4, Subunits 4A, 4B, 4C, and 4D, San Diego County, California.

(i) [Reserved for textual description of unit.]

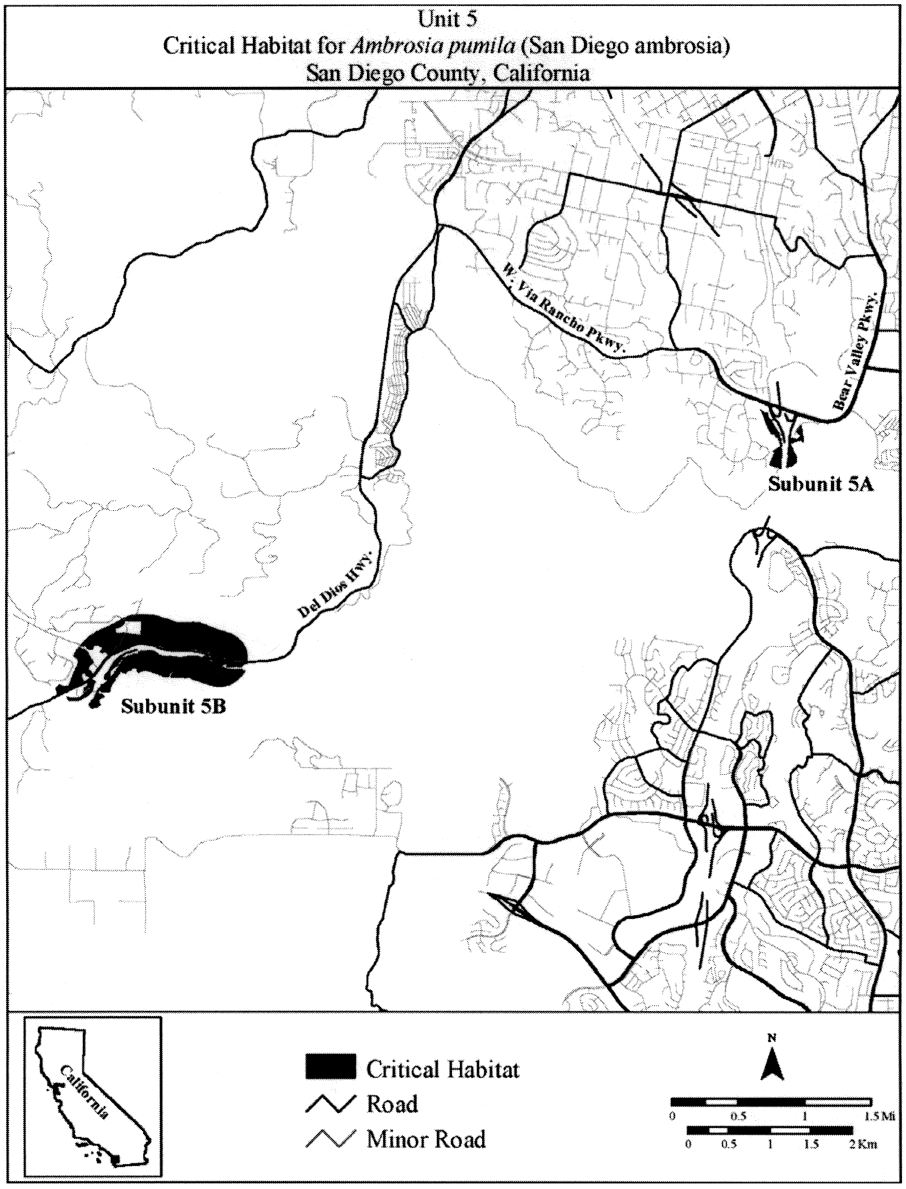
(ii) Note: Map of Unit 4, with Subunits 4A, 4B, 4C, and 4D, of critical habitat for *Ambrosia pumila* (San Diego ambrosia), San Diego County, California, follows:



(9) Unit 5, Subunits 5A and 5B, San Diego County, California.

(i) [Reserved for textual description of unit.]

(ii) Note: Map of Unit 5, with Subunits 5A and 5B, of critical habitat for *Ambrosia pumila* (San Diego ambrosia), San Diego County, California, follows:



* * * * *

Dated: May 7, 2010

Will Shafroth,

Acting Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–11674 Filed 5–17–10; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 75, No. 95
Tuesday, May 18, 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

Economic Research Service

Notice of Intent To Request a New Information Collection

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to send comments regarding any aspect of this proposed information collection. This is a new collection for the National Food Survey Field Test.

DATES: Written comments on this notice must be received on or before July 19, 2010 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Mark Denbaly, Food Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St., NW., Room N2164, Washington, DC 20036–5801. Comments may also be submitted via fax to the attention of Mark Denbaly at 202–694–5661 or via e-mail to *mdenbaly@ers.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Economic Research Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 1800 M St., NW., Room N2164, Washington, DC 20036–5801.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: For further information contact Mark Denbaly at the address in the preamble. Tel. 202–694–5390.

SUPPLEMENTARY INFORMATION:

Title: National Food Survey Field Test.

OMB Number: 0536–XXXX.

Expiration Date: Three years from the date of approval.

Type of Request: New collection.

Abstract: This field test of the National Food Survey will be conducted over a two-month period with about 400 households to test survey procedures for the planned full-scale, nationally representative National Food Survey. Legislative authority for the planned data collection is Section 17 [7 U.S.C. 2026](a)(1) of the Food and Nutrition Act of 2008. This section authorizes the Secretary to enter into contracts with private institutions to undertake research that will help improve the administration and effectiveness of the Supplemental Nutrition Assistance Program (SNAP) in delivering nutrition-related benefits.

The information to be collected by the National Food Survey is necessary to assess and understand the relationships among: (1) Foods purchased for consumption at home and away from home over a one-week period, as well as foods acquired through food and nutrition assistance programs (both public and private); (2) household access to food, including locations where food is acquired and distance to acquisition points; (3) number of meals and snacks consumed by each household member during a one-week period; and (4) household characteristics, including income, participation in federal food assistance programs, non-food expenditures, food security, health status, and diet and nutrition knowledge of the primary food shopper.

This survey will provide data not currently available to program officials and researchers, thereby broadening the scope of economic analyses of food choices made by U.S. households and how those choices influence diet quality and reflect decisions about participation in food assistance programs. The information to be collected by the survey is necessary to assess and understand the relationships among: (1) The types of foods and beverages households purchase, including those obtained and consumed away from home; (2) the nutritional quality of these foods and beverages; (3) the types of food retailers within proximity to households; (4) the influence of household income and food prices on purchases of food brought home and food consumed away from home; (5) levels of food security and the relationships between food security and types of food purchases; (6) levels of dietary knowledge and the relationship with types of food purchases; and (7) differences in food acquisition and food security outcomes between participants in the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program) and nonparticipants.

The field test will collect data from about 400 low-income households selected at random from within two Primary Sampling Units (counties). The sample will be selected from an address-based sampling frame. Households residing at selected addresses will be asked to complete a brief screener to determine eligibility. Eligible households will be asked to participate in the one-week survey. The primary respondent, identified as the primary food shopper, will be asked to use a handheld scanner provided by the study to scan all foods with barcodes brought into the home for a one-week period. All members of the household age 11 years and older will be asked to keep a food diary of all foods that they acquire and consume away from home during the one-week period; primary respondents will report the food diary information for all household members via brief telephone interviews three times during the week. The primary household respondent will also be asked to complete three interviews:

(1) Household Interview #1 will be conducted in person by a field interviewer at the start of the data collection week and will collect information about household demographics, food shopping, and participation in food assistance programs; (2) Household Interview #2 will be conducted by telephone in the middle of the data collection week and will collect information about non-food expenditures, income, and assets; (3) Household Interview #3 will be conducted in person at the end of the data collection week and will collect information about health status, diet and nutrition knowledge, and food security.

The field test will test the efficacy of two alternate survey protocols for collecting food data ("simple" and "comprehensive") and two different incentive levels for time spent completing the forms. Respondent households will be randomly assigned to different survey protocols and incentive levels.

All study instruments will be kept as simple and respondent-friendly as possible. Responses are voluntary and confidential. Responses will be combined for statistical purposes and reported only in aggregate or statistical form. Data files from the field test will not be released to the public.

Affected Public: Respondent groups include: (1) Households participating in the Supplemental Nutrition Assistance Program (SNAP); and (2) low-income households not participating in SNAP, where low-income is defined as household income at or below 185 percent of the poverty guidelines.

Estimated Number of Respondents: The estimated number of respondents for the field test includes: (1) 1,476 households screened for income eligibility (it is expected that 1,063 households, or 72 percent, will complete the screener and 413, or 28 percent, will not); (2) of the 585 households expected to be determined to be eligible for the survey after completing the screener, 503 (86 percent) are expected to agree to participate and complete Household Interview #1 and to collect food data, and 82, (14 percent) will not; (3) of the 82 households expected to decline participation in the survey, 61 (74 percent) are expected to complete the Short Form for Refusals, and 21 (26 percent) are expected to decline; (4) of the 503 households who complete Household Interview #1 and are eligible for remaining survey components, 453 (90 percent) are expected to complete Household Interview #2, reporting of food obtained for home preparation and consumption, and the food diary for all household members, and 50 (10 percent) will not; (5) of the 503 households who complete Household Interview #1, 402 (80 percent) are expected to complete Household Interview #3 and three Telephone interviews to report food diary information, and 101 (20 percent) will not; and (6) of the of the expected 1,207 food diaries to be completed (*i.e.,* an average of 2.4 family members per household), 1,086 diaries (90 percent) are expected to be completed and 121 (10 percent) will not.

Estimates of the percentages of respondents who will agree to complete the forms are based, insofar as possible, on experience with previous data collections of similar complexity.

Estimated Number of Responses per Respondent: 9.37 (average). Estimated responses per respondent are as follows: All 1,476 sampled households will be asked to respond to the screener once; an estimated 585 survey-eligible households will be asked to respond to the Household Interview #1 once; an estimated 81 households will be asked to respond to the Short Form for Refusals once; an estimated 503 household completing Household Interview #1 will be asked to respond to Household Interview #2 once; and an estimated 452 households completing Household Interview #2 will be asked to respond to Household Interview #3 once.

The estimated 503 households completing Household Interview #1 will be asked to complete reports on and scan food brought into the home, with an estimated frequency of three times during the seven-day data collection period. An estimated 1,207 family members aged 11 and above (an average of 2.4 members per household) will be asked to complete seven daily food diaries for food not brought home. An estimated 503 households will be asked to report food diary information over the telephone three times.

Estimated Total Annual Responses: 13,827.

Estimated Time per Response: 0.25 hours. As shown in the table below, the estimated time of response varies from 0.13 hours (8 minutes) to 0.58 hours (35 minutes) per instrument for respondents and from 0.03 hours (2 minutes) to 0.08 hours (5 minutes) per instrument for non-respondents. These estimates of respondent burden are based on experience with previous data collections of similar complexity.

Estimated Total Annual Burden on Respondents: 3,400.67 hours. See the table below for the estimated total annual burden for each type of instrument.

REPORTING BURDEN

Description	Estimated number of respondents	Responses annually per respondent	Total annual reponses	Estimated average number of hours per response *	Estimated total annual hours of response burden
Household screener:					
Completed interviews	1,063	1.00	1,063	0.25	265.75
Attempted interviews	413	1.00	413	0.08	34.42
Household Interview #1:					
Completed interviews	503	1.00	503	0.42	209.58
Attempted interviews	82	1.00	82	0.08	6.83
Short Form for Refusals:					
Completed interviews	61	1.00	61	0.13	8.13
Attempted interviews	21	1.00	21	0.03	0.70
Household Interview #2:					
Completed interviews	453	1.00	453	0.58	264.25
Attempted interviews	50	1.00	50	0.05	2.50
Household Interview #3:					
Completed interviews	402	1.00	402	0.33	134.00
Attempted interviews	101	1.00	101	0.05	5.05

REPORTING BURDEN—Continued

Description	Estimated number of respondents	Responses annually per respondent	Total annual reponses	Estimated average number of hours per response *	Estimated total annual hours of response burden
Reporting food obtained for home preparation or consumption:					
Completed reports	453	3.00	1,359	0.17	226.50
Attempted reports	50	1.00	50	0.05	2.50
Food diary:					
Completed reports	1,086	7.00	7,602	0.25	1,900.54
Attempted reports	120	3.00	360	0.08	30.00
Telephone reporting of "food away from home":					
Completed interviews	402	3.00	1206	0.25	301.50
Attempted interviews	101	1.00	101	0.08	8.42
Total responding burden	1,476	9.37	13,827	0.25	3,400.67

* Estimates are rounded to the nearest hundredth.

Dated: April 30, 2010.

Katherine R. Smith,

Administrator, Economic Research Service.

[FR Doc. 2010–11832 Filed 5–17–10; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Humboldt Resource Advisory Committee (RAC) will meet in Eureka, California. The committee meeting is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to orient new committee members to the Secure Rural Schools Act, guidelines for Title II, and Federal Advisory Committee Act and receive public comment on the meeting subjects and proceedings.

DATES: The meeting will be held June 9, 2010, from 6 p.m. to 8:30 p.m.

ADDRESSES: The meeting will be held at the Six Rivers National Forest Office, 1330 Bayshore Way, Eureka, CA 95501.

FOR FURTHER INFORMATION CONTACT: Julie Ranieri, Committee Coordinator, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95503; (707) 441–3673; e-mail *jranieri@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Agenda items to be covered include: (1) Welcome and Committee introductions; (2) Federal Advisory Committee Act overview; (3) review of Secure Rural Schools Act and discussion of requirements related to Title II funding; (4) discussion of Committee member, Designated Federal Official and RAC Coordinator roles; (5) selection of RAC Chair; (6) next meeting agenda, location, and date; and (7) receive public comment. An opportunity will be provided for the public to address the Committee.

Dated: May 12, 2010.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2010–11803 Filed 5–17–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, June 2–3, 2010. The purpose of the meeting is to discuss emerging issues in urban and community forestry, work on Council administrative items and hear public input related to urban and community forestry.

DATES: The meeting will be held on June 2–3, 2010, from 9 a.m. to 5 p.m. or until Council business is completed.

ADDRESSES: The meeting will be held at the Hall of States Building, 444 North Capitol Street, NW., Room 283, Washington, DC 20001, *phone:* 202–624–5373. Written comments concerning this meeting should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th Street SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us,* or via facsimile to 202–690–5792.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Visitors who would like to inspect the record are encouraged to call ahead to facilitate entry into the Forest Service building.

FOR FURTHER INFORMATION CONTACT: Mary Dempsey, Staff Assistant to National Urban and Community Forestry Advisory Council, 201 14th Street, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Those interested in attending should contact Mary Dempsey to be placed on the list at lobby security desk, Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff (201 14th Street SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, *e-mail: nstremple@fs.fed.us*) before or after the meeting. Public input sessions will be provided at the meeting. Public comments will be compiled and provided to the Secretary of Agriculture along with the Council's recommendations.

Dated: May 11, 2010.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2010–11836 Filed 5–17–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet June 18, 2010 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Handout Discussion, (3) Public Comment, (4) Financial Report, (5) Sub-committees, (6) Matters before the group, (7) Discussion—approval of projects, and (8) Next agenda and meeting date.

DATES: The meeting will be held on June 18, 2010, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983–6658; E-mail *windmill@willitsonline.com.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by June 14, 2010. Public comment will have the opportunity to address the committee at the meeting.

Dated: May 10, 2010.

Lee Johnson,

Designated Federal Official.

[FR Doc. 2010–11804 Filed 5–17–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–002]

Chloropicrin from the People's Republic of China: Notice of Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determination by the Department of Commerce ("the Department") and the International Trade Commission ("ITC") that revocation of the antidumping duty order on chloropicrin from the People's Republic of China ("PRC") would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing notice of the continuation of this antidumping duty order.

EFFECTIVE DATE: May 18, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5047.

SUPPLEMENTARY INFORMATION: On July 1, 2009, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on chloropicrin from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1]

The Department conducted an expedited sunset review of this order. As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2]

On April 23, 2010, the ITC published its determination pursuant to section 751(c) of the Act that revocation of the antidumping duty order on chloropicrin from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order:

The merchandise subject to this antidumping duty order is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre–plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 2904.90.50.05.[4] The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Continuation of the Order:

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on chloropicrin from the PRC.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with sections 751(c) and 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: April 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11871 Filed 5–17–10; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See Initiation of Five-year ("Sunset") Review*, 74 FR 31412 (July 1, 2009); *see also Antidumping Duty Order; Chloropicrin from the People's Republic of China*, 49 FR 10691 (March 22, 1984) ("Order").

[2] *See Chloropicrin From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 74 FR 57450 (November 6, 2009).

[3] *See Chloropicrin from China*, 75 FR 21346 (April 23, 2010)

[4] In 2004, a new HTS category was developed and identified specifically for imports of chloropicrin *i.e.*, 2904.90.50.05. Previously, the HTS category that included chloropicrin was 2904.90.50.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV18

Endangered and Threatened Species; Recovery Plans

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

ACTION: Extension of public comment period; correction.

SUMMARY: On May 7, 2010, we, NMFS, extended the public comment period for the Draft Recovery Plan for Central California Coast coho salmon (Draft Plan). In the **ADDRESSES** portion of the **Federal Register** notice, we incorrectly requested that the subject line of e-mail comments use the following identifier: Comments on Central Valley Salmon and Steelhead Draft Plan. We should have requested that the subject line of e-mail comments use the following identifier: Comments on CCC Coho Draft Plan. This document corrects that notice.

DATES: Information and comments on the subject action must be received by July 6, 2010.

ADDRESSES: Please send written comments to Charlotte Ambrose, National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404. Comments may also be submitted by e-mail to: *CohoRecovery.SWR@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Comments on CCC Coho Draft Plan. Comments may be submitted via facsimile (fax) to (707) 578–3435.

Persons wishing to review the Draft Plan can obtain an electronic copy (*i.e.,* CD–ROM) from Andrea Berry by calling (866) 300–2948 or by e-mailing a request to *Andrea.Berry@noaa.gov* with the subject line "CD–ROM Request for CCC coho salmon Recovery Draft Plan." Electronic copies of the Draft Plan are also available on-line on the NMFS Web site *http://swr.nmfs.noaa.gov/recovery/Coho_Recovery_Plan_031810.htm.*

FOR FURTHER INFORMATION CONTACT: Charlotte Ambrose, NCCC Domain Recovery Coordinator at (707) 575–6068, or Maura Eagan Moody at (707) 575–6092.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2010, we published a Notice of Availability of the Draft Central California Coast coho salmon Recovery Plan (Draft Plan) for public review and comment (75 FR 13081). The Draft Plan addresses the Central California Coast coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU). NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. As part of that proposal, we provided a 60-day comment period, ending on May 17, 2010. Public meetings were held in Fort Bragg, CA, on March 31, 2010, in Santa Cruz, CA, on April 8, and in Santa Rosa, CA on April 9, 2010. We received requests for an extension of the public comment period. In response to these requests, we extended the comment period for the proposed action to July 6, 2010 (75 FR 25204).

Information and comments must be received by July 6, 2010.

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

Dated: May 12, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–11850 Filed 5–17–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the final results of the new shipper review of certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam"). This review covers the period February 1, 2008 through January 31, 2009.

EFFECTIVE DATE: May 18, 2010.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2010, the Department published its notice of preliminary intent to rescind the new shipper review in the antidumping duty order on shrimp from Vietnam for Nhat Duc Co., Ltd. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Intent To Rescind New Shipper Review*, 75 FR 3446 (January 21, 2010) ("Preliminary Rescission"). On April 20, 2010, the Department extended the time limit to complete its final results of this review by 30 days. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Final Results of Antidumping Duty New Shipper Review*, 75 FR 20563 (April 20, 2010). The final results of this review are currently due no later than May 19, 2010.[1]

Statutory Time Limits

In antidumping duty new shipper reviews, section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(i)(1) requires the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results are issued. However, the Department may extend the deadline for completion of the final results of a new shipper review to 150 days after the date on which the preliminary results are issued if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2)

Extension of Time Limit for Final Results of Review

The Department has determined that the review is extraordinarily complicated as the Department must analyze extensive comments received from interested parties on its *Preliminary Rescission*. Based on the timing of the case and the extensive arguments that must be analyzed, the final results of this new shipper review cannot be completed within the extended statutory time limit of 120 days after the date upon which the preliminary results were issued.

Therefore, the Department is extending the time limit for completion of the final results of this new shipper review by an additional 30 days from the May 19, 2010 deadline. The final

[1] Due to the extended closure of the Government between February 5 and 11, 2010, all deadlines for active cases were tolled by one calendar week. See Memorandum From Ronald Lorentzen, DAS for Import Administration, Regarding Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm, available at http://ia.ita.doc.gov/download/administrative–deadline-tolling–memo–021210.pdf.

results will now be due no later than June 18, 2010.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: May 11, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–11868 Filed 5–17ndash;10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843), (A–570–901]

Certain Lined Paper Products from India and People's Republic of China: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Stephanie Moore, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–3692, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2009, the U.S. Department of Commerce ("Department") published a notice of initiation of both the administrative review of the antidumping duty order on certain lined paper products (CLPP) from India, and the administrative review of the antidumping duty order on CLPP from the People's Republic of China (PRC), covering the period September 1, 2008, to August 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 54956 (October 26, 2009). The preliminary results of these reviews are currently due no later than June 9, 2010.[1]

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires that the Department make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days.

We determine that completion of the preliminary results of these two reviews within the 245-day period is not practicable for the following reasons. Specifically, the CLPP from India review covers two mandatory respondents, one of which has not been individually examined previously. Given the complexity of the issues associated with this case, the Department needs additional time to address these issues with the new respondent. The CLPP from the PRC review covers four respondents. The Department needs additional time to analyze issues regarding affiliation for one respondent, and another respondent's claim of no shipments during the period of review. Further, the Department needs additional time to gather and analyze a significant amount of information associated with affiliation, companies' sales practices, the manufacturing costs regarding one respondent, and the customs entry data regarding another respondent. Finally, domestic interested parties have raised other issues in the CLPP from the PRC review which require the collection of additional information. Given the number and complexity of issues in these cases, and in accordance with section 751(a)(3)(A) of the Act, we are fully extending the time period for issuing the preliminary results of these reviews by 120 days. Therefore, the preliminary results are now due no later than October 7, 2010. The final results continue to be due 120 days after publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: May 12, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–11872 Filed 5–17–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 18, 2010.

SUMMARY: On February 22, 2010, the Department of Commerce (the Department) preliminarily determined that Evotape S.p.A was the successor-in-interest to Tyco Adhesives Italia S.p.A. (Tyco), and that Evotape Packaging S.r.l. (Evotape Packaging) and Evotape Masking S.r.l. (Evotape Masking) are both successors-in-interest to Evotape S.p.A for purposes of determining antidumping liability. *See Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 75 FR 8925 (February 26, 2010) (*Preliminary Results*). We confirm our preliminary determination in these final results of changed circumstances review.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1280 and (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2009, Evotape Packaging requested that the Department conduct an expedited changed circumstances review to determine that it is the successor-in-interest to Tyco for purposes of determining antidumping liability.[1] On September 10, 2009, the Department initiated a changed circumstances review but did not expedite the review, as requested by Evotape Packaging, because questions remained as to the factual claims

[1] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of these antidumping duty administrative reviews is now June 9, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding ≥Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm, "dated February 12, 2010."

[1] The cash deposit rate currently applicable to Tyco is zero percent. The all-others rate is 10 percent.

forming the basis of the change circumstances review request. *See Pressure Sensitive Plastic Tape from Italy: Notice of Initiation of Antidumping Duty Changed Circumstances Review,* 74 FR 47555 (September 16, 2009) (Initiation Notice). On February 22, 2010, the Department preliminarily determined that Evotape S.p.A was the successor-in-interest to Tyco, and that Evotape Packaging and Evotape Masking were both successors-in-interest to Evotape S.p.A. As the ultimate successors-in-interest producing in-scope merchandise, we preliminarily found that Evotape Packaging and Evotape Masking should be assigned the antidumping duty cash deposit rate that is currently in effect for Tyco. *See Preliminary Results.*

On March 12, 2010, we received comments from 3M Company (3M), a U.S. producer of the domestic like product and an interested party in this review. On March 18, 2010, we received rebuttal comments from Evotape Packaging and its affiliates Evotape Masking and Evotape S.p.A (collectively Evotape). For further discussion, *see* "Analysis of Comments Received" section below.

Scope of the Finding

The product covered by the finding is pressure sensitive plastic tape (PSP Tape) measuring over one and three-eighths inches in width and not exceeding four mils in thickness, currently classifiable under subheadings 3919.10.20 and 3919.90.50 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and for customs purposes. The written description remains dispositive.

Analysis of Comments Received

3M argues that because Evotape Masking has stated on the record that it does not ship or sell the subject merchandise to the United States, and has no future plans to do so, this changed circumstances review has been a purely theoretical exercise, and the Department has wasted its resources by granting a meaningless changed circumstances review request. On the other hand, 3M argues, if Evotape is indeed interested in the U.S. market, and has misled the Department regarding its intentions, the credibility of the information on the record is called into question. Under either scenario, according to 3M, there appears to be no reason to grant Evotape's changed circumstances request at this time. (*See* Pressure Sensitive Tape from Italy: Comments of 3M Company on the Preliminary Results of the Changed Circumstances Review (March 12, 2010)).

Evotape asserts that 3M has not challenged any of the Department's preliminary findings, but opposes Evotape's changed circumstances request at this late date based solely on the representation of Evotape Masking that it has no intention to ship subject merchandise to the United States. Evotape asserts further that Evotape Packaging originally requested the changed circumstances review because it is the entity that intends to ship PSP Tape to the United States. Evotape contends, however, that it was appropriate, as a matter of law, for the Department to have ruled as it did with regard to both Evotape Packaging and Evotape Masking, even though Evotape Masking has no intention to export subject merchandise to the United States, because both companies are successors-in-interest to Evotape S.p.A. Evotape adds that, unlike in an annual administrative review which requires U.S. entry of a respondent's merchandise during the review period for that respondent to have standing to request the review, there is no requirement in the statute or in the Department's regulations mandating that an applicant for a changed circumstances review possess a present or future intention to ship subject merchandise to the United States. Evotape argues that the only requirement is that the applicant be an interested party, which is defined to include a "foreign manufacturer, producer, or exporter * * * of the subject merchandise." *See* sections 771(9)(A) and 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216. Evotape concludes that because both Evotape Packaging and Evotape Masking are producers of in-scope merchandise, a fact which is undisputed, either or both of these companies were entitled to file a changed circumstances review request. Accordingly, it argues, 3M's opposition is without merit. As there has been no challenge to the substance of the Department's preliminary determination, Evotape requests that the Department issue its final determination, consistent with its preliminary determination. (*See* Evotape's Reply to 3M's Post-Preliminary Determination Comments: Changed Circumstances Review in Pressure Sensitive Tape from Italy Case No. A–475–059 (March 18, 2010)).

The Department's Position

As stated in the *Initiation Notice,* the Department initiated this changed circumstances review because Evotape presented sufficient information to warrant doing so under section 751(b)(1) of the Act and 19 CFR 351.216 (*see Initiation Notice,* 74 FR 47555). We agree with Evotape that neither the statute nor the Department's regulations make the initiation and conduct of a changed circumstances review contingent upon an interested party's intent to export the subject merchandise to the United States. Notwithstanding this fact, however, we note that at this time both Evotape Packaging and Evotape Masking are interested parties under section 771(9)(A) of the Act, as both produce PSP Tape, and Evotape Packaging exports it to the United States. Therefore, we have properly conducted this changed circumstances review in accordance with the statute and our regulations, and have concluded it based on the successor-in-interest analysis set out in the *Preliminary Results.*

Final Results of Changed-Circumstances Review

For the reasons stated in the *Preliminary Results,* we continue to find that Evotape S.p.A is the successor-in-interest to Tyco, and that Evotape Packaging and Evotape Masking are both successors-in-interest to Evotape S.p.A. Thus, Evotape Packaging and Evotape Masking should receive the same antidumping duty rate with respect to PSP Tape as Tyco. The cash deposit determination from this changed circumstances review will apply to all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Evotape participates.

Notification

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act, and 19 CFR 351.216 and 351.221(c)(3).

Dated: May 12, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11866 Filed 5–17–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Institute of Standards and Technology Performance Review Board Membership

The National Institute of Standards and Technology Performance Review Board (NIST PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the NIST PRB and supersedes the list published in **Federal Register** Vol. 73, No. 164, pages 49646–49647, on August 22, 2008:

Michael Culpepper (C), Chief Human Capital Officer, National Institute of Standards & Technology, Gaithersburg, MD 20899. *Appointment Expires:* 12/31/12.

Robert Dimeo (C), Deputy Director, NIST Center for Neutron Research, National Institute of Standards & Technology, Gaithersburg, MD 20899. *Appointment Expires:* 12/31/12.

Stella Fiotes (C), (Alternate) Chief Facilities Management Officer, National Institute of Standards & Technology, Gaithersburg, MD 20899. *Appointment Expires:* 12/31/12.

Ellen Herbst (C), Senior Advisor for Policy and Program Integration, Office of the Deputy Secretary, Department of Commerce, Washington, DC 20230. *Appointment Expires:* 12/31/2012.

Sivaraj Shyam-Sunder (C), (Alternate) Director, Building and Fire Research Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899. *Appointment Expires:* 12/31/10.

Dated: May 11, 2010.

Katharine Gebbie,

Director, Physics Laboratory.

[FR Doc. 2010–11843 Filed 5–17–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XV36

Stanford University Habitat Conservation Plan

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service, Interior (DOI).

ACTION: Notice; correction.

SUMMARY: NMFS and FWS published a notice in the Federal Register on April 12, 2010, announcing the availability of the Stanford University Habitat Conservation Plan (Plan), the Draft Environmental Impact Statement (DEIS) for Authorization of Incidental Take and Implementation of the Plan, and the Implementing Agreement (IA) for public review and comment. The document contained incorrect dates and contact information.

DATES: This correction is effective May 18, 2010.

FOR FURTHER INFORMATION CONTACT: Gary Stern, 707–575–6060; or Sheila Larsen, 916–414–6600.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the **Federal Register** of April 12, 2010, in FR Doc. 2010-8300, on page 18483, in the first column, correct the "**DATES**" paragraph to read:

DATES: Written comments on the DEIS, Plan, and IA, must be received by 5 p.m. Pacific Time on July 15, 2010.

In the same **Federal Register** notice, on page 18483, in the first column, correct the "**FOR FURTHER INFORMATION CONTACT**" paragraph to read:

FOR FURTHER INFORMATION CONTACT: (1) Ms. Sheila Larsen, Senior Staff Biologist, U.S. Fish and Wildlife Service at 2800 Cottage Way, Room W-2605, Sacramento, California 95825; telephone 916–414–6600; or (2) Gary Stern, San Francisco Bay Region Supervisor, National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 ; telephone 707–575–6060.

Dated: May 11, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: May 11, 2010.

Alexandra Pitts,

Acting Deputy Region Director, Pacific Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2010–11852 Filed 5–17–10; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV09

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Open Water Marine Survey Program in the Beaufort and Chukchi Seas, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from Shell Offshore Inc. (Shell) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to a proposed open water marine survey program in the Beaufort and Chukchi Seas, Alaska, between July and October 2010. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Shell to take, by Level B harassment only, eight species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than June 17, 2010.

ADDRESSES: Comments on the application should be addressed 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. The mailbox address for providing e-mail comments is *PR1.0648-XV09@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will

generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* 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.

A copy of the application used in this document may be obtained by writing to the address specified above, 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: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137.

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.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

Summary of Request

NMFS received an application on December 24, 2009, from Shell for the taking, by harassment, of marine mammals incidental to several marine surveys designed to gather data relative to site clearance and shallow hazards, ice gouge, and strudel scour in selected areas of the Beaufort Sea and ice gouge in the Chukchi Sea, Alaska. These surveys are continuations of those performed by Shell in the Beaufort Sea beginning in 2006, and in the Chukchi Sea in 2008. After addressing comments from NMFS, Shell modified its application and submitted a revised application on April 19, 2010. The April 19, 2009, application is the one available for public comment (*see* **ADDRESSES**) and considered by NMFS for this proposed IHA.

Site clearance and shallow hazards surveys will evaluate the seafloor, and shallow sub seafloor at prospective exploration drilling locations, focusing on the depth to seafloor, topography, the potential for shallow faults or gas zones, and the presence of archaeological features. The types of equipment used to conduct these surveys use low level energy sources focused on limited areas in order to characterize the footprint of the seafloor and shallow sub seafloor at prospective drilling locations. Ice gouge surveys will determine the depth and distribution of ice gouges into the seabed. Ice gouge surveys use low-level energy sources similar to the site clearance and shallow hazards.

Shell intends to conduct these marine surveys during the 2010 Arctic open-water season (July through October). Impacts to marine mammals may occur from noise produced by various active acoustic sources used in the surveys.

Description of the Specified Activity

Shell plans to complete the following surveys during the 2010 open-water season:

- Beaufort Sea Site Clearance and Shallow Hazards Surveys
- Beaufort Sea Marine Surveys
  - Ice Gouge Survey
  - Strudel Scour Survey
- Chukchi Sea Marine Surveys
  - Ice Gouge Survey

Each of these individual surveys will require marine vessels to accomplish the work. Shell states that these marine surveys will be conducted between July and October 2010, however, ice and weather conditions will influence the exact dates and locations marine vessel survey operations can be conducted.

1. Beaufort Sea Site Clearance and Shallow Hazards Surveys

Shell's proposed site clearance and shallow hazards surveys are to gather data on: (1) Bathymetry, (2) seabed topography and other seabed characteristics (*e.g.,* boulder patches), (3) potential geohazards (*e.g.,* shallow faults and shallow gas zones), and (4) the presence of any archeological features (*e.g.,* shipwrecks). Site clearance and shallow hazards surveys can be accomplished by one vessel with acoustic sources. No other vessels are necessary to accomplish the proposed work.

The focus of this activity will be on Shell's existing leases in Harrison Bay in the central Beaufort Sea. Actual locations of site clearance and shallow hazards surveys within Harrison Bay have not been definitively set as of this date, although these will occur on the Outer Continental Shelf (OCS) lease blocks in Harrison Bay located in the Beaufort Sea shown on Figure 1 of Shell's IHA application. The site clearance and shallow hazards surveys will be conducted within an area of approximately 216 mi^2 (558 km^2) north of Thetis Island more than 3 mi (4.8 km) to approximately 20 mi (33 km) offshore. Approximately 63 mi (162.7 km) of the data acquisition is planned within this general area. The survey track line is approximately 351.5 mi^2 (565 km^2). The average depth of the survey area ranges from 35 to 85 ft (10.7 to 26 m).

Ice and weather permitting, Shell is proposing to conduct site clearance and shallow hazards surveys within the timeframe of July 2010 through October 2010. The actual survey time is expected to take 30 days.

The vessel that will be conducting this activity has not been determined at this point, but will be similar to the R/V *Mt. Mitchell* which is the vessel that was used for surveys in the Chukchi Sea in 2009. The R/V *Mt. Mitchell* is a diesel powered-vessel, 70 m (231 ft) long, 12.7 m (42 ft) wide, with a 4.5 m (15 ft) draft.

It is proposed that the following acoustic instrumentation, or something similar, be used.

• *Deep Penetration Profiler, (40 cu-in airgun source with 48-channel streamer) and Medium Penetration Profiler, (40 cu-in airgun source with 24-channel streamer):*

The deep and medium penetration profiler and the medium penetration profiler are the major active acoustic sources used in the site clearance and shallow hazards surveys. The modeled source level is estimated at 217 dB re 1 μPa rms. The 120, 160, 180, and 190 dB re 1 μPa rms received level isopleths are estimated at 14,900 m, 1,220 m, 125 m, and 35 m from the source, respectively.

• *Dual-frequency side scan sonar, (100–400 kHz or 300–600 kHz):*

Based on the 2006 Shell's 90-day report, the source level of this active acoustic source when operated at 190 and 240 kHz is approximately 225 dB re 1 μPa rms. Due to its high frequency range, NMFS does not consider its acoustic energy would be strong enough to cause impacts to marine mammals beyond a couple of hundred meters from the source.

• *Single beam Echo Sounder, (high: 100–340 kHz, low: 24–50 kHz):*

This echo sounder is a typical "fathometer" or "fish-finder" that is widely used in most recreational or fishing vessels. Source levels for these types of units are typically in the range of 180–200 dB re 1 μPa rms. Using a spherical spreading model, the 160 dB isopleth is estimated at 100 m from the source for the lower range of the acoustic signals. For the higher range of the signal, due to the higher absorption coefficients, the 160 dB isopleth is expected to be under 100 m from the source.

• *Multi-beam Echo Sounder, (240 kHz):*

Since the output frequency from this echo sounder is above the upper limit of marine mammal hearing range, NMFS does not believe this equipment would affect marine mammals.

• *Shallow Sub-Bottom Profiler, (2–12 kHz):*

Information regarding this active acoustic source on two vessels (*Alpha Helix* and *Henry C.*) was provided in Shell's 2008 90-day open water marine survey monitoring report. For the *Alpha Helix* measurement, at 3.5 kHz, the source level for the shallow sub-bottom profiler was 193.8 dB re 1 μPa rms, and its 120, 160, 180, and 190 dB re 1 μPa rms isopleths were determined to be 310 m, 14 m, 3 m, and 1 m from the source, respectively. For the *Henry C.* measurement, at 3.5 kHz, the source level of the similar profiler was measured at 167.2 dB re 1 μPa rms, and its 120 and 160 dB re 1 μPa rms isopleths were determined to be 980 m and 3 m, respectively.

2. Beaufort Sea Marine Surveys

Two marine survey activities are proposed for the Beaufort Sea: (1) Ice gouge survey, and (2) strudel scour survey. Shell continues to conduct these types of marine surveys annually over a few years to enhance baseline and statistical understanding of the formation, longevity, and temporal distribution of sea floor features and baseline environmental and biologic conditions. Marine surveys for ice gouge and strudel scour surveys can be accomplished by one vessel for each. No other vessels are necessary to accomplish the proposed work.

The proposed ice gouge surveys will be conducted in both State of Alaska waters including Camden Bay, and the Federal waters of the OCS in the Beaufort Sea near Pt. Thomson ranging from near shore to approximately 37 mi (59.5 km) offshore. The water depth in the ice gouging survey area ranges between 15 to 120 ft (4.5 to 36.6 m), and the surveys will be conducted within an area of 1,950 mi^2 (5,036 km^2) with a survey track line of approximately 1,276 mi (2,050 km, See Figure 2 of Shell's IHA application).

The proposed strudel scour survey will occur in State of Alaska waters in Pt. Thomson ranging from near shore to 3 mi (4.8 km) offshore. The water depth ranges from 3 to 20 ft (0.9 to 6.1 m). The strudel scour survey will be conducted in an area of approximately 140 mi^2 (361.5 km^2). The survey track line is approximately 124 mi (200 km).

Ice and weather permitting, Shell is proposing to conduct this work within the timeframe of July 2010 through October 2010. The actual survey time is expected to take 45 days.

Ice Gouge Survey

As part of the feasibility study for Shell's Alaskan prospects a survey is required to identify and evaluate seabed conditions. Ice gouging is created by ice keels, which project from the bottom of moving ice and gouge into seafloor sediment. Ice gouge features are mapped, and by surveying each year, new gouges can be identified. The ice gouge information is used to aid in predicting the prospect of, orientation, depth, and frequency of future ice gouges. Ice gouge information is required for the design of potential pipelines and for the design of pipeline trenching and installation equipment.

The 2010 ice gouge surveys will be conducted using the conventional survey method where the acoustic instrumentation will be towed behind the survey vessel, or possibly with the use of an Autonomous Underwater Vehicle (AUV). The same acoustic instrumentation will be used during both AUV and the conventional survey methods. The AUV is a self-propelled autonomous vehicle that will be equipped with acoustic instrumentation and programmed for remote operation over the seafloor where the ice gouge survey is to be conducted, and the vehicle is launched and retrieved from a marine vessel.

For the survey operations, the AUV will be launched from the stern of a vessel and will survey the seafloor close to the vessel. The vessel will transit an area, with the AUV surveying the area behind the vessel. The AUV also has a Collision Avoidance System and operates without a towline that reduces potential impact to marine mammals (such as entanglement). Using bathymetric sonar or multibeam echo sounder the AUV can record the gouges on the seafloor surface caused by ice keels. The sub-bottom profiler can record layers beneath the surface to about 20 feet (6 m). The AUV is more maneuverable and able to complete surveys quicker than a conventional survey. This reduces the duration that vessels producing sound must operate. The proposed ice gouge survey in the Beaufort Sea is expected to last for 45 days.

The vessel that will be used for ice gouging surveys has not been selected, but it is anticipated that the vessel would be similar to the R/V *Mt. Mitchell,* which is 70 m (231 ft) long, 12.7 m (42 ft) wide, and 4.5 m (15 ft) draft.

It is proposed that the following acoustic instrumentation, or something similar, be used.

• Dual Frequency subbottom profiler; (2 to 7 kHz or 8 to 23 kHz):

Information regarding this active acoustic source on *Henry C.* was provided in Shell's 2006 and 2007 90-day open water marine survey monitoring reports. In the 2006 report, at 2–7 and 8–23 kHz, the source level was estimated at 184.6 dB re 1 μPa rms, and its 120, 160, and 180 dB re 1 μPa rms isopleths were determined to be 456 m, 7 m, and 2 m from the source, respectively. In the 2007 report, at 2–7 kHz, the source level was estimated at 161.1 dB re 1 μPa rms, and its 120 and 160 dB re 1 μPa rms isopleths were determined to be 260 m and 1 m, respectively.

• Multibeam Echo Sounder (240 kHz) and Side-scan sonar system (190 to 210 kHz):

Since the output frequencies from these acoustic instruments are above the upper-limits of marine mammal hearing range, NMFS does not believe they would affect marine mammals.

Because of the low source levels of the sub-bottom profiler and the high-frequency nature of the multi-beam echo sounder used in the proposed ice gouge survey, NMFS believes it unlikely that a marine mammal would be taken by this activity.

Strudel Scour Survey

During the early melt on the North Slope, the rivers begin to flow and discharge water over the coastal sea ice near the river deltas. That water flows down holes in the ice ("strudels") and scours the seafloor. These areas are called "strudel scours." Information on these features is required for prospective pipeline planning. Two proposed activities are required to gather this information: Aerial survey via helicopter overflights during the melt to locate the strudels; and strudel scour marine surveys to gather bathymetric data. The overflights investigate possible sources of overflood water and will survey local streams that discharge in the vicinity of Point Thomson including the Staines River, which discharges to the east into Flaxman Lagoon, and the Canning River, which discharges to the east directly into the Beaufort Sea. These helicopter overflights will occur during late May/early June 2010 and, weather permitting, should take no more than two days. There are no planned landings during these overflights other than at the Deadhorse or Kaktovik airports.

Areas that have strudel scour identified during the aerial survey will be verified and surveyed with a marine vessel after the breakup of nearshore ice. The vessel has not been determined, however, it is anticipated that it will be the diesel-powered R/V *Annika Marie* which has been utilized 2006 through 2008 and measures 13.1 m (43 ft) long, or similar vessel.

This proposed activity is not anticipated to take more than 5 days to conduct. The operation is conducted in the shallow water areas near the coast in the vicinity of Point Thomson. This vessel will use the following equipment:

• *Multibeam Echo Sounder (240 kHz) and Side-scan sonar system (190 to 210 kHz):*

Since the output frequencies from these acoustic instruments are above the upper-limits of marine mammal hearing range, NMFS does not believe they would affect marine mammals.

• *Single Beam Bathymetric Sonar:*

Source levels for these types of units are typically in the 180–230 dB range, somewhat lower than multibeam or side scan sonars. A unit used during a previous survey had a source level (at high power) of 215 dB re 1 μPa (0-peak) and a standard operating frequency of 200 kHz. Since the output frequencies from these acoustic instruments are above the upper-limits of marine mammal hearing range, NMFS does not believe they would affect marine mammals.

3. Chukchi Sea Marine Survey—Ice Gouge Survey

Shell proposes one marine survey activity for the Chukchi Sea in 2010. Shell intends to conduct ice gouge surveys annually over a few years to enhance baseline and statistical understanding of the formation, longevity, and temporal distribution of sea floor features and baseline environmental and biologic conditions. The ice gouge survey can be accomplished by one vessel. No other vessels are necessary to accomplish the proposed work.

The proposed ice gouge surveys will be conducted in both State of Alaska waters and the Federal waters of the OCS in the Chukchi Sea. Actual locations of the ice gouge surveys have not been definitively set as of this date, although these will occur within the area outlined in Figure 4 of the IHA application. The water depth of the ice gouging survey ranges between 20 to 120 ft (6.1 to 36.6 m), and the surveys will take in an area of 21,954 mi^2 (56,965 km^2), with a survey track line of approximately 1,539 mi (2,473 km). This activity is proposed to be conducted within the timeframe of July through October 2010. The total program will last a maximum of 60 days, excluding downtime due to ice, weather and other unforeseen delays, and should be complete by the end of October 2010.

The equipment and method used to conduct the ice gouge survey in the Chukchi Sea will be the same as that used in the Beaufort Sea. Because of the low source levels of the sub-bottom profiler and the high-frequency nature of the multi-beam echo sounder used in the proposed ice gouge survey, NMFS believes it unlikely that a marine mammal would be taken by this activity.

Description of Marine Mammals in the Area of the Specified Activity

Nine cetacean and four pinniped species under NMFS jurisdiction could occur in the general area of Shell's open water marine survey areas in the Beaufort and Chukchi Seas. The species most likely to occur in the general area near Harrison Bay in the Alaskan Beaufort Sea include two cetacean species: beluga (*Delphinapterus leucas*) and bowhead whales (*Balaena mysticetus*) and three seal species: ringed (*Phoca hispida*), spotted (*P. largha*), and bearded seals (*Erignathus barbatus*). Most encounters are likely to occur in nearshore shelf habitats or along the ice edge. The marine mammal species that is likely to be encountered most widely (in space and time) through-out the period of the planned shallow hazards surveys is the ringed seal. Encounters with bowhead and beluga whales are expected to be limited to particular regions and seasons, as discussed below.

Other marine mammal species that have been observed in the Beaufort and Chukchi Seas but are less frequent or uncommon in the project area include harbor porpoise (*Phocoena phocoena*), narwhal (*Monodon monoceros*), killer whale (*Orcinus orca*), fin whale (*Balaenoptera physalus*), minke whale (*B. acutorostrata*), humpback whale (*Megaptera novaeangliae*), gray whale (*Eschrichtius robustus*), and ribbon seal (*Histriophoca fasciata*). These species could occur in the project area, but each of these species is uncommon or rare in the area and relatively few encounters with these species are expected during the proposed marine surveys. The narwhal occurs in Canadian waters and occasionally in the Beaufort Sea, but it is rare there and is not expected to be encountered. There are scattered records of narwhal in Alaskan waters, including reports by subsistence hunters, where the species is considered extralimital (Reeves *et al.* 2002). Point Barrow, Alaska, is the approximate northeastern extent of the harbor porpoise's regular range (Suydam and George 1992), though there are extralimital records east to the mouth of the Mackenzie River in the Northwest Territories, Canada, and recent sightings in the Beaufort Sea in the vicinity of Prudhoe Bay during surveys in 2007 and 2008 (Christie *et al.* 2009). Monnett and Treacy (2005) did not report any harbor porpoise sightings during aerial surveys in the Beaufort Sea from 2002 through 2004. Humpback, fin, and minke whales have recently been sighted in the Chukchi Sea but very rarely in the Beaufort Sea. Greene *et al.* (2007) reported and photographed a humpback whale cow/calf pair east of Barrow near Smith Bay in 2007, which is the first known occurrence of humpbacks in the Beaufort Sea. Savarese *et al.* (2009) reported one minke whale sighting in

the Beaufort Sea in 2007 and 2008. Ribbon seals do not normally occur in the Beaufort Sea; however, two ribbon seal sightings were reported during vessel-based activities near Prudhoe Bay in 2008 (Savarese *et al.* 2009).

The bowhead and humpback whales are listed as "endangered" under the Endangered Species Act (ESA) and as depleted under the MMPA. Certain stocks or populations of gray, beluga, and killer whales and spotted seals are listed as endangered or proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. Additionally, the ribbon seal is considered a "species of concern" under the ESA, and the bearded and ringed seals are "candidate species" under the ESA, meaning they are currently being considered for listing.

Shell's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (*see* **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2009 SAR is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2009.pdf*.

Potential Effects of the Specified Activity on Marine Mammals

Operating a variety of active acoustic sources such as airguns, side-scan sonars, echo-sounders, and sub-bottom profilers for site clearance and shallow hazard surveys, ice gouge, and strudel surveys can impact marine mammals in a variety of ways.

Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun pulses might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.* 1995):

(1) Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times, mammals of all three types have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than baleen whales.

(2) Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerreo Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

Currently NMFS uses 160 dB re 1 μPa at received level for impulse noises (such as airgun pulses) as the onset of marine mammal behavioral harassment.

(3) Masking

Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that experience severe acoustic masking will have reduced fitness in survival and reproduction.

Masking occurs when noise and signals (that the animal utilizes) overlap at both spectral and temporal scales. For the airgun noise generated from the proposed site clearance and shallow hazards surveys, noise will consist of low frequency (under 1 kHz) pulses with extremely short durations (in the scale of milliseconds). Lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. There is little concern regarding masking near the noise source due to the brief duration of these pulses and relatively longer silence between airgun shots (9–12 seconds). However, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be "stretched" to seconds with long decays (Madsen *et al.* 2006). Therefore it could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009). Nevertheless, the intensity of the noise is also greatly reduced at such long distances (for example, the modeled received level drops below 120 dB re 1 μPa rms at 14,900 m from the source).

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior such as shifting call frequencies, increasing call volume and vocalization rates. For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence

Estuary (Di Iorio and Clark 2010). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *el al.* 2000).

(4) Hearing Impairment

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Just like masking, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound.

Experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB re 1 μPa (p-p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are lower than those to which odontocetes are most sensitive, and natural ambient noise levels at those low frequencies tend to be higher (Urick 1983). As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales. However, no cases of TTS are expected given the small size of the airguns proposed to be used and the strong likelihood that baleen whales (especially migrating bowheads) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.* 1999, 2005; Ketten *et al.* 2001). However, more recent indications are that TTS onset in the most sensitive pinniped species studied (harbor seal, which is closely related to the ringed seal) may occur at a similar SEL as in odontocetes (Kastak *et al.,* 2004).

NMFS (1995, 2000) concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa rms. The established 180- and 190-dB re 1 μPa rms criteria are not considered to be the levels above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As summarized above, data that are now available to imply that TTS is unlikely to occur unless bow-riding odontocetes are exposed to airgun pulses much stronger than 180 dB re 1 μPa rms (Southall *et al.* 2007).

No cases of TTS are expected as a result of Shell's proposed activities given the small size of the source, the strong likelihood that baleen whales (especially migrating bowheads) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS, and the mitigation measures proposed to be implemented during the survey described later in this document.

There is no empirical evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns (see Southall *et al.,* 2007). However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. That is, PTS might occur at a received sound level magnitudes higher than the level of onset TTS, or by repeated exposure to the levels that cause TTS. Therefore, by means of preventing the onset of TTS, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient duration) to cause permanent hearing impairment during the proposed marine surveys in the Beaufort and Chukchi Seas.

(5) Non-auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (*i.e.,* beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns, and beaked whales do not occur in the proposed project area. In addition, marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects. The small airgun array proposed to be used by Shell would only have 190 and 180 dB distances of 35 and 125 m (115 and 410 ft), respectively.

Therefore, it is unlikely that such effects would occur during Shell's proposed surveys given the brief duration of exposure and the planned monitoring and mitigation measures described later in this document.

(6) Stranding and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.* 1993;

Ketten 1995). Airgun pulses are less energetic and their peak amplitudes have slower rise times. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to airgun pulses, even in the case of large airgun arrays.

However, in numerous past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times, and, without new information, does not believe that this issue warrants further discussion. For information relevant to strandings of marine mammals, readers are encouraged to review NMFS' response to comments on this matter found in 69 FR 74905 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), and 71 FR 49418 (August 23, 2006). In addition, a May-June 2008, stranding of 100–200 melon-headed whales (*Peponocephala electra*) off Madagascar that appears to be associated with seismic surveys is currently under investigation (IWC 2009).

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in the Beaufort and Chukchi seas. NMFS notes that in the Beaufort Sea, aerial surveys have been conducted by MMS and industry during periods of industrial activity (and by MMS during times with no activity). No strandings or marine mammals in distress have been observed during these surveys and none have been reported by North Slope Borough inhabitants. As a result, NMFS does not expect any marine mammals will incur serious injury or mortality in the Arctic Ocean or strand as a result of proposed seismic survey.

Potential Effects From Active Sonar Equipment on Marine Mammals

Several active acoustic sources other than the 40 cu-in airgun have been proposed for Shell's 2010 open water marine surveys in the Beaufort and Chukchi Seas. The specifications of these sonar equipments (source levels and frequency ranges) are provided above. In general, the potential effects of these equipments on marine mammals are similar to those from the airgun, except the magnitude of the impacts is expected to be much less due to the lower intensity and higher frequencies. Estimated source levels and zones of influence from sonar equipment are discussed above. In some cases, due to the fact that the operating frequencies of some of this equipment (*e.g.,* Multi-beam echo sounder: frequency at 240 kHz) are above the hearing ranges of marine mammals, they are not expected to have any impacts to marine mammals.

Vessel Sounds

In addition to the noise generated from seismic airguns and active sonar systems, various types of vessels will be used in the operations, including source vessels and support vessels. Sounds from boats and vessels have been reported extensively (Greene and Moore 1995; Blackwell and Greene 2002; 2005; 2006). Numerous measurements of underwater vessel sound have been performed in support of recent industry activity in the Chukchi and Beaufort Seas. Results of these measurements were reported in various 90-day and comprehensive reports since 2007 (*e.g.,* Aerts *et al.* 2008; Hauser *et al.* 2008; Brueggeman 2009; Ireland *et al.* 2009). For example, Garner and Hannay (2009) estimated sound pressure levels of 100 dB at distances ranging from approximately 1.5 to 2.3 mi (2.4 to 3.7 km) from various types of barges. MacDonald *et al.* (2008) estimated higher underwater SPLs from the seismic vessel *Gilavar* of 120 dB at approximately 13 mi (21 km) from the source, although the sound level was only 150 dB at 85 ft (26 m) from the vessel. Compared to airgun pulses, underwater sound from vessels is generally at relatively low frequencies.

The primary sources of sounds from all vessel classes are propeller cavitation, propeller singing, and propulsion or other machinery. Propeller cavitation is usually the dominant noise source for vessels (Ross 1976). Propeller cavitation and singing are produced outside the hull, whereas propulsion or other machinery noise originates inside the hull. There are additional sounds produced by vessel activity, such as pumps, generators, flow noise from water passing over the hull, and bubbles breaking in the wake. Icebreakers contribute greater sound levels during ice-breaking activities than ships of similar size during normal operation in open water (Richardson *et al.* 1995). This higher sound production results from the greater amount of power and propeller cavitation required when operating in thick ice. Source levels from various vessels would be empirically measured before the start of marine surveys.

Anticipated Effects on Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.* 1983; Ona 1988; Ona and Godo 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken 1992; Olsen 1979; Ona and Godo 1990; Ona and Toresen 1988). However, other researchers have found that fish such as polar cod, herring, and capeline are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.* 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.* 1995).

Some mysticetes, including bowhead whales, feed on concentrations of zooplankton. Some feeding bowhead whales may occur in the Alaskan Beaufort Sea in July and August, and others feed intermittently during their westward migration in September and October (Richardson and Thomson [eds.] 2002; Lowry *et al.* 2004). Reactions of zooplanktoners to sound are, for the most part, not known. Their abilities to move significant distances

are limited or nil, depending on the type of animal. A reaction by zooplankton to sounds produced by the marine survey program would only be relevant to whales if it caused concentrations of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only near the airgun source, which is expected to be a very small area. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on feeding mysticetes.

Proposed Mitigation

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse 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.

For the proposed Shell open water marine surveys in the Beaufort and Chukchi Sea, Shell worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the marine survey activities.

As part of the application, Shell submitted to NMFS a Marine Mammal Monitoring and Mitigation Program (4MP) for its shallow hazards survey activities in the Beaufort Sea during the 2010 open-water season. The objectives of the 4MP are:

- To ensure that disturbance to marine mammals and subsistence hunts is minimized and all permit stipulations are followed,
- To document the effects of the proposed survey activities on marine mammals, and
- To collect baseline data on the occurrence and distribution of marine mammals in the study area.

The 4MP may be modified or supplemented based on comments or new information received from the public during the public comment period or from the peer review panel (see the "Monitoring Plan Peer Review" section later in this document).

Mitigation Measures Proposed in Shell's IHA Application

For the proposed mitigation measures, Shell listed the following protocols to be implemented during its marine surveys in the Beaufort Sea.

(1) Sound Source Measurements

As described above, previous measurements of airguns in the Harrison Bay area were used to model the distances at which received levels are likely to fall below 160, 180, and 190 dB re 1 μPa (rms) from the planned airgun sources. These modeled distances will be used as temporary safety radii until measurements of the airgun sound source are conducted. The measurements will be made at the beginning of the field season and the measured radii used for the remainder of the survey period.

The objectives of the sound source verification measurements planned for 2010 in the Beaufort Sea will be (1) to measure the distances in the broadside and endfire directions at which broadband received levels reach 190, 180, 170, 160, and 120 dB re 1 μPa (rms) for the energy source array combinations that may be used during the survey activities. The configurations will include at least the full array and the operation of a single source that will be used during power downs. The measurements of energy source array sounds will be made at the beginning of the survey and the distances to the various radii will be reported as soon as possible after recovery of the equipment. The primary radii of concern will be the 190 and 180 dB safety radii for pinnipeds and cetaceans, respectively, and the 160 dB disturbance radii. In addition to reporting the radii of specific regulatory concern, nominal distances to other sound isopleths down to 120 dB re 1 μPa (rms) will be reported in increments of 10 dB.

Data will be previewed in the field immediately after download from the ocean bottom hydrophone (OBH) instruments. An initial sound source analysis will be supplied to NMFS and the airgun operators within 120 hours of completion of the measurements, if possible. The report will indicate the distances to sound levels between 190 dB re 1 μPa (rms) and 120 dB re 1 μPa (rms) based on fits of empirical transmission loss formulae to data in the endfire and broadside directions. The 120-hour report findings will be based on analysis of measurements from at least three of the OBH systems. A more detailed report including analysis of data from all OBH systems will be issued to NMFS as part of the 90-day report following completion of the acoustic program.

Airgun pressure waveform data from the OBH systems will be analyzed using JASCO's suite of custom signal processing software that implements the following data processing steps:

- Energy source pulses in the OBH recordings are identified using an automated detection algorithm. The algorithm also chooses the 90% energy time window for rms sound level computations.
- Waveform data is converted to units of μPa using the calibrated acoustic response of the OBH system. Gains for frequency-dependent hydrophone sensitivity, amplifier and digitizer are applied in this step.
- For each pulse, the distance to the airgun array is computed from GPS deployment positions of the OBH systems and the time referenced DGPS navigation logs of the survey vessel.
- The waveform data are processed to determine flat-weighted peak sound pressure level (PSPL), rms SPL and SEL.
- Each energy pulse is Fast Fourier Transformed (FFT) to obtain 1-Hz spectral power levels in 1-second steps.
- The spectral power levels are integrated in standard 1/3-octave bands to obtain band sound pressure levels (BSPL) for bands from 10 Hz to 20 kHz. Both un-weighted and M-weighted (frequency weighting based on hearing sensitivities of four marine mammal functional hearing groups, see Southall et al. (2007) for a review) SPL's for each airgun pulse may be computed in this step for species of interest.

The output of the above data processing steps includes listings and graphs of airgun array narrow band and broadband sound levels versus range, and spectrograms of shot waveforms at specified ranges. Of particular importance are the graphs of level versus range that are used to compute representative radii to specific sound level thresholds.

(2) Safety and Disturbance Zones

Under current NMFS guidelines, "safety radii" for marine mammals exposure to impulse sources are customarily defined as the distances within which received sound levels are ≥180 dB re 1 μPa (rms) for cetaceans and ≥190 dB re 1 μPa (rms) for pinnipeds. These safety criteria are based on an assumption that SPL received at levels lower than these will not injure these animals or impair their hearing abilities, but that SPL received at higher levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the safety radii (Richardson *et al.* 1995).

Initial safety and disturbance radii for the sound levels produced by the survey activities have been modeled. These

radii will be used for mitigation purposes until results of direct measurements are available early during the exploration activities. The planned survey will use an airgun source composed of either 40 in^3 airguns or 1 x 20-in^3 plus 2 x 10-in^3 airguns. The total source volume will be 4 x 10 in^3. Measurements of a 2 x 10-in^3 airgun array used in 2007 were reported by Funk *et al.* (2008). These measurements were used as the basis for modeling both of the potential airgun arrays that may be used in 2010. The modeling results showed that the 40 in^3 array is likely to produce sounds that propagate further than the alternative array, so those results were used to estimate "takes by harassment" in Shell's IHA application and will also be used during initial survey activities prior to in-field sound source measurements. The modeled 190 and 180 dB distances from a 40 cubic inch array were 35 and 125 m, respectively. Because this is a modeled estimate, but based on similar measurements at the same location, the estimated distances for initial safety radii were only increased by a factor of 1.25 instead of a typical 1.5 factor. This results in a 190-dB distance of 44 m and a 180-dB distance of 156 m.

A single 10-in^3 airgun will be used as a mitigation gun during turns or if a power down of the full array is necessary due to the presence of a marine mammal close to the vessel. Underwater sound propagation of a 10-in^3 airgun was measured near Harrison Bay in 2007 and results were reported in Funk *et al.* (2008). The 190 dB and 180 dB distances from those measurements, 5 m and 20 m respectively, will be used as the pre-sound source measurement safety zones during use of the single mitigation gun.

An acoustics contractor will perform the direct measurements of the received levels of underwater sound versus distance and direction from the energy source arrays using calibrated hydrophones. The acoustic data will be analyzed as quickly as reasonably practicable in the field and used to verify (and if necessary adjust) the safety distances. The mitigation measures to be implemented at the 190 and 180 dB sound levels will include power downs and shut downs as described below.

(3) Power Downs and Shut Downs

A power-down is the immediate reduction in the number of operating energy sources from all firing to some smaller number. A shutdown is the immediate cessation of firing of all energy sources. The arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable safety zone of the full arrays but is outside or about to enter the applicable safety zone of the single mitigation source. If a marine mammal is sighted within the applicable safety zone of the single mitigation airgun, the entire array will be shut down (*i.e.,* no sources firing). Although MMOs will be located on the bridge ahead of the center of the airgun array, the shutdown criterion for animals ahead of the vessel will be based on the distance from the bridge (vantage point for MMOs) rather than from the airgun array—a precautionary approach. For marine mammals sighted alongside or behind the airgun array, the distance is measured from the array.

Following a power-down or shutdown, operation of the airgun array will not resume until the marine mammal has cleared the applicable safety zone. The animal will be considered to have cleared the safety zone if it:

- Is visually observed to have left the safety zone;
- Has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds; or
- Has not been seen within the zone for 30 min in the case of mysticetes.

(4) Ramp Ups

A ramp up of an airgun array provides a gradual increase in sound levels, and involves a stepwise increase in the number and total volume of airguns firing until the full volume is achieved.

The purpose of a ramp up (or "soft start") is to "warn" cetaceans and pinnipeds in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the proposed shallow hazards survey program, the seismic operator will ramp up the airgun arrays slowly. Full ramp ups (*i.e.,* from a cold start after a shut down, when no airguns have been firing) will begin by firing a single airgun in the array. The minimum duration of a shut-down period, *i.e.,* without air guns firing, which must be followed by a ramp up typically is the amount of time it would take the source vessel to cover the 180-dB safety radius. The actual time period depends on ship speed and the size of the 180-dB safety radius. That period is estimated to be about 1–2 minutes based on the modeling results described above and a survey speed of 4 knots.

A full ramp up, after a shut down, will not begin until there has been a minimum of 30 min of observation of the safety zone by MMOs to assure that no marine mammals are present. The entire safety zone must be visible during the 30-minute lead-in to a full ramp up. If the entire safety zone is not visible, then ramp up from a cold start cannot begin. If a marine mammal(s) is sighted within the safety zone during the 30-minute watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the safety zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds, or 30 minutes for baleen whales and large odontocetes.

During turns and transit between seismic transects, at least one airgun will remain operational. The ramp-up procedure still will be followed when increasing the source levels from one airgun to the full arrays. However, keeping one airgun firing will avoid the prohibition of a cold start during darkness or other periods of poor visibility. Through use of this approach, seismic operations can resume upon entry to a new transect without a full ramp up and the associated 30-minute lead-in observations. MMOs will be on duty whenever the airguns are firing during daylight, and during the 30-min periods prior to ramp-ups as well as during ramp-ups. Daylight will occur for 24 h/day until mid-August, so until that date MMOs will automatically be observing during the 30-minute period preceding a ramp up. Later in the season, MMOs will be called out at night to observe prior to and during any ramp up. The seismic operator and MMOs will maintain records of the times when ramp-ups start, and when the airgun arrays reach full power.

Additional Mitigation Measures Proposed by NMFS

Besides Shell's proposed mitigation measures discussed above, NMFS proposes the following additional protective measures to address some uncertainties regarding the impacts to bowhead cow-calf pairs and aggregations of whales from seismic surveys. Specifically, NMFS proposes that:

- For seismic activities (including shallow hazards and site clearance and other marine surveys where active acoustic sources will be employed) in the Beaufort Sea after August 25, a 120-dB monitoring (safety) zone for bowhead whales will be established and monitored for the next 24 hours if four or more bowhead whale cow/calf pairs are observed at the surface during an aerial monitoring program within the area where an ensonified 120-dB zone around the vessel's track is projected. To the extent practicable, such

monitoring should focus on areas upstream (eastward) of the bowhead migration. No seismic surveying shall occur within the 120-dB safety zone around the area where these whale cow-calf pairs were observed, until two consecutive surveys (aerial or vessel) indicate they are no longer present within the 120-dB safety zone of seismic-surveying operations.

• A 160-dB vessel monitoring zone for bowhead and gray whales will be established and monitored in the Chukchi Sea and after August 25 in the Beaufort Sea during all seismic surveys. Whenever an aggregation of bowhead whales or gray whales (12 or more whales of any age/sex class that appear to be engaged in a nonmigratory, significant biological behavior (*e.g.,* feeding, socializing)) are observed during an aerial or vessel monitoring program within the 160-dB safety zone around the seismic activity, the seismic operation will not commence or will shut down, until two consecutive surveys (aerial or vessel) indicate they are no longer present within the 160-dB safety zone of seismic-surveying operations.

• Survey information, especially information about bowhead whale cow-calf pairs or feeding bowhead or gray whales, shall be provided to NMFS as required in MMPA authorizations, and will form the basis for NMFS determining whether additional mitigation measures, if any, will be required over a given time period.

Furthermore, NMFS proposes the following measures be included in the IHA, if issued, in order to ensure the least practicable impact on the affected species or stocks:

(1) All vessels should reduce speed when within 300 yards (274 m) of whales, and those vessels capable of steering around such groups should do so. Vessels may not be operated in such a way as to separate members of a group of whales from other members of the group;

(2) Avoid multiple changes in direction and speed when within 300 yards (274 m) of whales; and

(3) When weather conditions require, such as when visibility drops, support vessels must adjust speed accordingly to avoid the likelihood of injury to whales.

Mitigation Conclusions

NMFS has 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.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed 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.

Proposed 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 proposed action area.

Monitoring Measures Proposed in Shell's IHA Application

The monitoring plan proposed by Shell can be found in the 4MP. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period or from the peer review panel (see the "Monitoring Plan Peer Review" section later in this document). A summary of the primary components of the plan follows.

(1) Vessel-Based MMOs

Vessel-based monitoring for marine mammals will be done by trained MMOs throughout the period of marine survey activities. MMOs will monitor the occurrence and behavior of marine mammals near the survey vessel during all daylight periods during operation and during most daylight periods when airgun operations are not occurring. MMO duties will include watching for and identifying marine mammals, recording their numbers, distances, and reactions to the survey operations, and documenting "take by harassment" as defined by NMFS.

A sufficient number of MMOs will be required onboard the survey vessel to meet the following criteria: (1) 100% monitoring coverage during all periods of survey operations in daylight; (2) maximum of 4 consecutive hours on watch per MMO; and (3) maximum of 12 hours of watch time per day per MMO.

MMO teams will consist of Inupiat observers and experienced field biologists. An experienced field crew leader will supervise the MMO team onboard the survey vessel. The total number of MMOs may decrease later in the season as the duration of daylight decreases.

Shell anticipates that there will be provision for crew rotation at least every six to eight weeks to avoid observer fatigue. During crew rotations detailed hand-over notes will be provided to the incoming crew leader by the outgoing leader. Other communications such as e-mail, fax, and/or phone communication between the current and oncoming crew leaders during each rotation will also occur when possible. In the event of an unexpected crew change Shell will facilitate such communications to insure monitoring consistency among shifts.

Crew leaders and most other biologists serving as observers in 2010 will be individuals with experience as observers during one or more of the 1996–2009 seismic or shallow hazards monitoring projects in Alaska, the Canadian Beaufort, or other offshore areas in recent years.

Biologist-observers will have previous marine mammal observation experience, and field crew leaders will be highly experienced with previous vessel-based marine mammal monitoring and mitigation projects. Resumes for those individuals will be provided to NMFS for review and acceptance of their qualifications. Inupiat observers will be experienced in the region, familiar with the marine mammals of the area, and complete a NMFS approved observer training course designed to familiarize individuals with monitoring and data collection procedures. A marine mammal observers' handbook, adapted for the specifics of the planned survey program, will be prepared and distributed beforehand to all MMOs.

Most observers, including Inupiat observers, will also complete a two-day training and refresher session on marine mammal monitoring, to be conducted shortly before the anticipated start of the 2010 open-water season. Any exceptions will have or receive

equivalent experience or training. The training session(s) will be conducted by qualified marine mammalogists with extensive crew-leader experience during previous vessel-based seismic monitoring programs.

Primary objectives of the training include:

- Review of the marine mammal monitoring plan for this project, including any amendments specified by NMFS in the IHA (if issued), by USFWS and by MMS, or by other agreements in which Shell may elect to participate;
- Review of marine mammal sighting, identification, and distance estimation methods;
- Review of operation of specialized equipment (reticle binoculars, night vision devices, and GPS system);
- Review of, and classroom practice with, data recording and data entry systems, including procedures for recording data on marine mammal sightings, monitoring operations, environmental conditions, and entry error control. These procedures will be implemented through use of a customized computer database and laptop computers;
- Review of the specific tasks of the Inupiat Communicator.

MMOs will watch for marine mammals from the best available vantage point on the survey vessel, typically the bridge. MMOs will scan systematically with the unaided eye and 7×50 reticle binoculars, supplemented with 20×60 image-stabilized Zeiss Binoculars or Fujinon 25×150 "Big-eye" binoculars and night-vision equipment when needed. Personnel on the bridge will assist the MMOs in watching for marine mammals.

Information to be recorded by marine mammal observers will include the same types of information that were recorded during recent monitoring programs associated with Industry activity in the Arctic (*e.g.,* Ireland *et al.* 2009). When a mammal sighting is made, the following information about the sighting will be recorded:

(A) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the MMO, apparent reaction to activities (*e.g.,* none, avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;

(B) Time, location, speed, activity of the vessel, sea state, ice cover, visibility, and sun glare; and

(C) The positions of other vessel(s) in the vicinity of the MMO location.

The ship's position, speed of support vessels, and water temperature, water depth, sea state, ice cover, visibility, and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

Distances to nearby marine mammals will be estimated with binoculars (Fujinon 7 x 50 binoculars) containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. MMOs may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water. However, previous experience showed that a Class 1 eye-safe device was not able to measure distances to seals more than about 230 ft (70 m) away. The device was very useful in improving the distance estimation abilities of the observers at distances up to about 1968 ft (600 m)—the maximum range at which the device could measure distances to highly reflective objects such as other vessels. Humans observing objects of more-or-less known size via a standard observation protocol, in this case from a standard height above water, quickly become able to estimate distances within about ±20% when given immediate feedback about actual distances during training.

For monitoring related to deployment of the AUV, MMOs will advise the vehicle operators prior to deployment if aggregations of marine mammals have been observed in the survey area which might increase the likelihood of the vehicle encountering an animal or otherwise disturbing a group of animals.

Shell plans to conduct the site clearance and shallow hazards survey 24 hr/day. Regarding nighttime operations, note that there will be no periods of total darkness until mid-August. When operating under conditions of reduced visibility attributable to darkness or to adverse weather conditions, night-vision equipment ("Generation 3" binocular image intensifiers, or equivalent units) will be available for use.

(2) Aerial Survey Program

Shell proposes to conduct an aerial survey program in support of the shallow hazards program in the Beaufort Sea during the fall of 2010. The shallow hazards survey program may start in the Beaufort Sea as early as July 2010, however, aerial surveys would not begin until the start of the bowhead whale migration, around August 20, 2010. The objectives of the aerial survey will be:

- To advise operating vessels as to the presence of marine mammals (primarily cetaceans) in the general area of operation;
- To collect and report data on the distribution, numbers, movement and behavior of marine mammals near the survey operations with special emphasis on migrating bowhead whales;
- To support regulatory reporting related to the estimation of impacts of survey operations on marine mammals;
- To investigate potential deflection of bowhead whales during migration by documenting how far east of survey operations a deflection may occur and where whales return to normal migration patterns west of the operations; and
- To monitor the accessibility of bowhead whales to Inupiat hunters.

Specially-outfitted Twin Otter aircraft have an excellent safety record and are expected to be the survey aircraft. These aircraft will be specially modified for survey work and have been used extensively by NMFS, Alaska Department of Fish and Game, North Slope Borough, and LGL Limited during many marine mammal projects in Alaska, including industry funded projects as recent as the 2006–2008 seasons. The aircraft will be provided with a comprehensive set of survival equipment appropriate to offshore surveys in the Arctic. For safety reasons, the aircraft will be operated with two pilots.

Aerial survey flights will begin around August 20, 2010. Surveys will then be flown daily during the shallow hazards survey operations, weather and flight conditions permitting, and continued for 5 to 7 days after all activities at the site have ended.

The aerial survey procedures will be generally consistent with those used during earlier industry studies (Davis *et al.* 1985; Johnson *et al.* 1986; Evans *et al.* 1987; Miller *et al.* 1997, 1998, 1999, 2002; Patterson 2007). This will facilitate comparison and pooling of data where appropriate. However, the specific survey grids will be tailored to Shell's operations. During the 2010 open-water season Shell will coordinate and cooperate with the aerial surveys conducted by MMS/NMFS and any other groups conducting surveys in the same region.

It is understood that shallow hazard survey timing and the specific location offshore of Harrison Bay are subject to change as a result of unpredictable weather and ice conditions. The aerial survey design is therefore intended to be flexible and able to adapt at short notice to changes in the operations.

For marine mammal monitoring flights, aircraft will be flown at approximately 120 knots (138 mph) ground speed and usually at an altitude of 1,000 ft (305 m). Flying at a survey

speed of 120 knots (138 mph) greatly increases the amount of area that can be surveyed, given aircraft limitations, with minimal effect on the ability to detect bowhead whales. Surveys in the Beaufort Sea are directed at bowhead whales, and an altitude of 900–1,000 ft (274–305 m) is the lowest survey altitude that can normally be flown without concern about potential aircraft disturbance. Aerial surveys at an altitude of 1,000 ft (305 m) do not provide much information about seals but are suitable for both bowhead and beluga whales. The need for a 900–1000+ (274–305 m) ft cloud ceiling will limit the dates and times when surveys can be flown.

Two primary observers will be seated at bubble windows on either side of the aircraft and a third observer will observe part time and record data the rest of the time. All observers need bubble windows to facilitate downward viewing. For each marine mammal sighting, the observer will dictate the species, number, size/age/sex class when determinable, activity, heading, swimming speed category (if traveling), sighting cue, ice conditions (type and percentage), and inclinometer reading to the marine mammal into a digital recorder. The inclinometer reading will be taken when the animal's location is 90° to the side of the aircraft track, allowing calculation of lateral distance from the aircraft trackline.

Transect information, sighting data and environmental data will be entered into a GPS-linked computer by the third observer and simultaneously recorded on digital voice recorders for backup and validation. At the start of each transect, the observer recording data will record the transect start time and position, ceiling height (ft), cloud cover (in 10ths), wind speed (knots), wind direction (°T) and outside air temperature (°C). In addition, each observer will record the time, visibility (subjectively classified as excellent, good, moderately impaired, seriously impaired or impossible), sea state (Beaufort wind force), ice cover (in 10ths) and sun glare (none, moderate, severe) at the start and end of each transect, and at 2-min intervals along the transect. This will provide data in units suitable for statistical summaries and analyses of effects of these variables (and position relative to the survey vessel) on the probability of detecting animals (*see* Davis *et al.* 1982; Miller *et al.* 1999; Thomas *et al.* 2002). The data logger will automatically record time and aircraft position (latitude and longitude) for sightings and transect waypoints, and at pre-selected intervals along transects.

Ice observations during aerial surveys will be recorded and satellite imagery may be used, where available, during post-season analysis to determine ice conditions adjacent to the survey area. These are standard practices for surveys of this type and are necessary in order to interpret factors responsible for variations in sighting rates.

Shell will assemble the information needed to relate marine mammal observations to the locations of the survey vessel, and to the estimated received levels of industrial sounds at mammal locations. During the aerial surveys, Shell will record relevant information on other industry vessels, whaling vessels, low-flying aircraft, or any other human activities that are observed in the survey area.

Shell will also consult with MMS/National Marine Mammal Laboratory regarding coordination during the survey activities and real-time sharing of data. The aims will be:

- To ensure aircraft separation when both crews conduct surveys in the same general region;
- to coordinate the 2010 aerial survey projects in order to maximize consistency and minimize duplication;
- To use data from MMS's broad-scale surveys to supplement the results of the more site specific Shell surveys for purposes of assessing the effects of shallow hazard survey activities on whales and estimating "take by harassment";
- To maximize consistency with previous years' efforts insofar as feasible.

It is expected that raw bowhead sighting and flight-line data will be exchanged between MMS and Shell on a daily basis during the survey period, and that each team will also submit its sighting information to NMFS in Anchorage each day. After the Shell and MMS data files have been reviewed and finalized, they will be exchanged in digital form.

Shell is not aware of any other related aerial survey programs presently scheduled to occur in the Alaskan Beaufort Sea in areas where Shell is anticipated to be conducting survey operations during July–October 2010. However, one or more other programs are possible in support of other industry and research operations. If another aerial survey project were planned, Shell would seek to coordinate with that project to ensure aircraft separation, maximize consistency, minimize duplication, and share data.

During the late summer and fall, bowhead whale is the primary species of concern, but belugas and gray whales are also present. To address concerns regarding deflection of bowheads at greater distances, the survey pattern around shallow hazards survey operations has been designed to document whale distribution from about 25 mi (40 km) east of Shell's vessel operations to about 37 mi (60 km) west of operations (see Figure 1 of Shell's 4MP).

Bowhead whale movements during the late summer/autumn are generally from east to west, and transects should be designed to intercept rather than parallel whale movements. The transect lines in the grid will be oriented north-south, equally spaced at 5 mi (8 km) and randomly shifted in the east-west direction for each survey by no more than the transect spacing. The survey grid will total about 808 mi (1,300 km) in length, requiring approximately 6 hours to survey at a speed of 120 knots (138 mph), plus ferry time. Exact lengths and durations will vary somewhat depending on the position of the survey operation and thus of the grid, the sequence in which lines are flown (often affected by weather), and the number of refueling/rest stops.

Weather permitting, transects making up the grid in the Beaufort Sea will be flown in sequence from west to east. This decreases difficulties associated with double counting of whales that are (predominantly) migrating westward.

(3) Acoustic Monitoring

As discussed earlier in this document, Shell will conduct SSV tests to establish the isopleths for the applicable safety radii. In addition, Shell proposes to use acoustic recorders to study bowhead deflections.

Shell plans to deploy arrays of acoustic recorders in the Beaufort Sea in 2010, similar to that which was done in 2007 and 2008 using Directional Autonomous Seafloor Acoustic Recorders (DASARs) supplied by Greeneridge. These directional acoustic systems permit localization of bowhead whale and other marine mammal vocalizations. The purpose of the array will be to further understand, define, and document sound characteristics and propagation resulting from shallow hazards surveys that may have the potential to cause deflections of bowhead whales from their migratory pathway. Of particular interest will be the east-west extent of deflection, if any (*i.e.,* how far east of a sound source do bowheads begin to deflect and how far to the west beyond the sound source does deflection persist). Of additional interest will be the extent of offshore (or towards shore) deflection that might occur.

In previous work around seismic operations in the Alaskan Beaufort Sea, the primary method for studying this question has been aerial surveys. Acoustic localization methods will provide supplementary information for addressing the whale deflection question. Compared to aerial surveys, acoustic methods have the advantage of providing a vastly larger number of whale detections, and can operate day or night, independent of visibility, and to some degree independent of ice conditions and sea state—all of which prevent or impair aerial surveys. However, acoustic methods depend on the animals to call, and to some extent, assume that calling rate is unaffected by exposure to industrial noise. Bowheads call frequently in fall, but there is some evidence that their calling rate may be reduced upon exposure to industrial sounds, complicating interpretation. The combined use of acoustic and aerial survey methods will provide a suite of information that should be useful in assessing the potential effects of survey operations on migrating bowhead whales.

Using passive acoustics with directional autonomous recorders, the locations of calling whales will be observed for a 6- to 10-week continuous monitoring period at five coastal sites (subject to favorable ice and weather conditions).

Shell plans to conduct the whale migration monitoring using the passive acoustics techniques developed and used successfully since 2001 for monitoring the migration past Northstar production island northwest of Prudhoe Bay and from Kaktovik to Harrison Bay during the 2007–2009 migrations. Those techniques involve using DASARs to measure the arrival angles of bowhead calls at known locations, then triangulating to locate the calling whale.

In attempting to assess the responses of bowhead whales to the planned industrial operations, it will be essential to monitor whale locations at sites both near and far from industry activities. Shell plans to monitor at five sites along the Alaskan Beaufort coast as shown in Figure 3 of Shell's 4MP. The eastern-most site (#5 in Figure 3 of the 4MP) will be just east of Kaktovik and the western-most site (#1 in Figure 3 of the 4MP) will be in the vicinity of Harrison Bay. Site 2 will be located west of Prudhoe Bay. Sites 4 and 3 will be west of Camden Bay. These five sites will provide information on possible migration deflection well in advance of whales encountering an industry operation and on "recovery" after passing such operations should a deflection occur.

The proposed geometry of DASARs at each site is comprised of seven DASARs oriented in a north-south pattern resulting in five equilateral triangles with 4.3-mi (7-km) element spacing. DASARs will be installed at planned locations using a GPS. However, each DASAR's orientation once it settles on the bottom is unknown and must be determined to know how to reference the call angles measured to the whales. Also, the internal clocks used to sample the acoustic data typically drift slightly, but linearly, by an amount up to a few seconds after 6 weeks of autonomous operation. Knowing the time differences within a second or two between DASARs is essential for identifying identical whale calls received on two or more DASARs.

Bowhead migration begins in late August with the whales moving westward from their feeding sites in the Canadian Beaufort Sea. It continues through September and well into October. Shell will attempt to install the 21 DASARs at three sites (3, 4 and 5) in early August. The remaining 14 DASARs will be installed at sites 1 and 2 in late August. Thus, Shell proposes monitoring for whale calls from before August 15 until sometime before October 15, 2010.

At the end of the season, the fourth DASAR in each array will be refurbished, recalibrated, and redeployed to collect data through the winter. The other DASARs in the arrays will be recovered. The redeployed DASARs will be programmed to record 35 min every 3 hours with a disk capacity of 10 months at that recording rate. This should be ample space to allow over-wintering from approximately mid-October 2010, through mid-July 2011.

Additional details on methodology and data analysis for the three types of monitoring described here (*i.e.,* vessel-based, aerial, and acoustic) can be found in the 4MP in Shell's application (*see* **ADDRESSES**).

Additional Monitoring Measures Proposed by NMFS

In addition to the vessel and aerial surveys and acoustic monitoring described above, NMFS proposes that Shell conduct vessel-based monitoring in the Chukchi Seas during the fall bowhead whale migration period to detect bowhead whale cow/calf pairs within the 120-dB isopleths (modeled at approximately 456 m or 1,496 ft) for mitigation purposes (See Proposed Mitigation section above).

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed "where the proposed activity may affect the availability of a species or stock for taking for subsistence uses" (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, "Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan" (50 CFR 216.108(d)).

NMFS convened an independent peer review panel to review Shell's 4MP for Proposed Open Water Marine Survey Program in the Beaufort and Chukchi Seas, Alaska, during 2010. The panel met and reviewed the 4MP in late March 2010, and provided comments to NMFS in late April 2010. NMFS will consider all recommendations made by the panel, incorporate appropriate changes into the monitoring requirements of the IHA (if issued) and publish the panel's findings and recommendations in the final IHA notice of issuance or denial document.

Reporting Measures

(1) SSV Report

A report on the preliminary results of the acoustic verification measurements, including as a minimum the measured 190-, 180-, 160-, and 120-dB re 1 μPa (rms) radii of the source vessel(s) and the support vessels, will be submitted within 120 hr after collection and analysis of those measurements at the start of the field season. This report will specify the distances of the safety zones that were adopted for the marine survey activities.

(2) Technical Reports

The results of Shell's 2010 open water marine survey monitoring program (*i.e.,* vessel-based, aerial, and acoustic), including estimates of "take" by harassment, will be presented in the "90-day" and Final Technical reports. Shell proposes that the Technical Reports will include: (a) Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals); (b) analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare); (c) species composition, occurrence, and distribution of marine mammal

sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover; (d) analyses of the effects of survey operations; (e) sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability); (f) initial sighting distances versus airgun activity state; (g) closest point of approach versus airgun activity state; (h) observed behaviors and types of movements versus airgun activity state; (i) numbers of sightings/individuals seen versus airgun activity state; (j) distribution around the survey vessel versus airgun activity state; and (k) estimates of take by harassment. This information will be reported for both the vessel-based and aerial monitoring.

Analysis of all acoustic data will be prioritized to address the primary questions. The primary data analysis questions are to (a) Determine when, where, and what species of animals are acoustically detected on each DASAR, (b) analyze data as a whole to determine offshore bowhead distributions as a function of time, (c) quantify spatial and temporal variability in the ambient noise, and (d) measure received levels of airgun activities. The bowhead detection data will be used to develop spatial and temporal animal distributions. Statistical analyses will be used to test for changes in animal detections and distributions as a function of different variables (*e.g.,* time of day, time of season, environmental conditions, ambient noise, vessel type, operation conditions).

The initial technical report is due to NMFS within 90 days of the completion of Shell's Beaufort and Chukchi Seas open water marine survey programs. The "90-day" report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

(3) Comprehensive Report

In November, 2007, Shell (in coordination and cooperation with other Arctic seismic IHA holders) released a final, peer-reviewed edition of the 2006 Joint Monitoring Program in the Chukchi and Beaufort Seas, July–November 2006 (LGL 2007). This report is available on the NMFS Protected Resources Web site (*see* **ADDRESSES**). In March, 2009, Shell released a final, peer-reviewed edition of the Joint Monitoring Program in the Chukchi and Beaufort Seas, Open Water Seasons, 2006–2007 (Ireland *et al.* 2009). This report is also available on the NMFS Protected Resources Web site (*see* **ADDRESSES**). A draft comprehensive report for 2008 (Funk *et al.* 2009) was provided to NMFS and those attending the Arctic Stakeholder Open-water Workshop in Anchorage, Alaska, on April 6–8, 2009. The 2008 report provides data and analyses from a number of industry monitoring and research studies carried out in the Chukchi and Beaufort Seas during the 2008 open-water season with comparison to data collected in 2006 and 2007. Reviewers plan to provide comments on the 2008 report to Shell shortly. Once Shell is able to incorporate reviewer comments, the final 2008 report will be made available to the public. The 2009 draft comprehensive report is due to NMFS by mid-April 2010. NMFS will make this report available to the public upon receipt.

Following the 2010 shallow hazards surveys a comprehensive report describing the vessel-based, aerial, and acoustic monitoring programs will be prepared. The comprehensive report will describe the methods, results, conclusions and limitations of each of the individual data sets in detail. The report will also integrate (to the extent possible) the studies into a broad based assessment of industry activities, and other activities that occur in the Beaufort and/or Chukchi seas, and their impacts on marine mammals during 2010. The report will help to establish long-term data sets that can assist with the evaluation of changes in the Chukchi and Beaufort Seas ecosystems. The report will attempt to provide a regional synthesis of available data on industry activity in offshore areas of northern Alaska that may influence marine mammal density, distribution and behavior. The comprehensive report will be due to NMFS within 240 days of the date of issuance of the IHA (if issued).

(4) Notification of Injured or Dead Marine Mammals

Shell will notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of marine survey operations. Shell will provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured or dead marine mammal is found by Shell that is not in the vicinity of the proposed open water marine survey program, Shell will report the same information as listed above as soon as operationally feasible to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed open water marine survey program. Anticipated take of marine mammals is associated with noise propagation from the seismic airgun(s) used in the site clearance and shallow hazards surveys.

The full suite of potential impacts to marine mammals was described in detail in the "Potential Effects of the Specified Activity on Marine Mammals" section found earlier in this document. The potential effects of sound from the proposed open water marine survey programs might include one or more of the following: Tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. For reasons discussed previously in this document, hearing impairment (TTS and PTS) is highly unlikely to occur based on the fact that most of the equipment to be used during Shell's proposed open water marine survey programs does not have received levels high enough to elicit even mild TTS beyond a short distance. For instance, for the airgun sources, the 180– and 190–dB re 1 μPa (rms) isopleths extend to 125 m and 35 m from the source, respectively. None of the other active acoustic sources is expected to have received levels above 180 dB re 1 μPa (rms) within the frequency bands of marine mammal hearing sensitivity (below 180 kHz) beyond a few meters from the source. Finally, based on the proposed mitigation and monitoring measures described earlier in this document, no injury or mortality of marine mammals is anticipated as a result of Shell's

proposed open water marine survey programs.

For impulse sounds, such as those produced by airgun(s) used for in the site clearance and shallow hazards surveys, NMFS uses the 160 dB re 1 μPa (rms) isopleth to indicate the onset of Level B harassment. Shell provided calculations for the 160–dB isopleths produced by these active acoustic sources and then used those isopleths to estimate takes by harassment. NMFS used these calculations to make the necessary MMPA preliminary findings. Shell provides a full description of the methodology used to estimate takes by harassment in its IHA application (*see* **ADDRESSES**), which is also provided in the following sections.

Shell has requested an authorization to take individuals of 11 marine mammal species by Level B harassment. These 11 marine mammal species are: Beluga whale (*Delphinapterus leucas*), narwhal (*Monodon monoceros*), harbor porpoise (*Phocoena phocoena*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), bearded seal (*Erignathus barbatus*), ringed seal (*Phoca hispida*), spotted seal (*P. largha*), and ribbon seal (*Histriophoca fasciata*). However, NMFS believes that narwhals, minke whales, and ribbon seals are not likely to occur in the proposed survey area during the time of the proposed site clearance and shallow hazards surveys. Therefore, NMFS believes that only the other eight of the 11 marine mammal species would likely be taken by Level B behavioral harassment as a result of the proposed marine surveys.

Basis for Estimating "Take by Harassment"

As stated previously, it is current NMFS policy to estimate take by Level B harassment for impulse sounds as occurring when an animal is exposed to a received level of 160 dB re 1μPa (rms). However, not all animals react to sounds at this low level, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger. Southall *et al.* (2007) provides a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (*see* Table 4 in Southall *et al.* (2007)). Tables 7, 9, and 11 in Southall *et al.* (2007) outline the numbers of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water, respectively, reported as having behavioral responses to multi-pulses in 10–dB received level increments. These tables illustrate that the more severe reactions did not occur until sounds were much higher than 160 dB re 1μPa (rms).

The proposed open water marine surveys would use low energy active acoustic sources, including a total volume of 40 cu-in airgun or airgun array. Other active acoustic sources used for ice gouging and strudel score all have relatively low source levels and/or high frequencies beyond marine mammal hearing range. Table 1 depicts the modeled and/or measured source levels, and radii for the 120, 160, 180, and 190 dB re 1μPa (rms) from various sources (or equivalent) that are proposed to be used in the marine mammal surveys by Shell.

TABLE 1—A LIST OF ACTIVE ACOUSTIC SOURCES PROPOSED TO BE USED FOR THE SHELL'S 2010 OPEN WATER MARINE SURVEYS IN THE CHUKCHI AND BEAUFORT SEAS

Survey types	Active acoustic sources	Frequency	Modeled source level	Radii (m) at modeled received levels (dB re 1 μPa)			
				190	180	160	120
Site Clearance & Shallow Hazards.	40 cu-in airgun		217	35	125	1,220	14,900
	Dual frequency side scan	190 & 240 kHz	225	Not modeled/measured because frequency outputs beyond marine mammal hearing range.			
	Single beam echo sound	high: 100–340 kHz, low: 24–50 kHz.	180–200	Not modeled/measured because frequency outputs beyond marine mammal hearing range.			
	Shallow sub-bottom profiler.	3.5 kHz (Alpha Helix)	193.8	1	3	14	310
		3.5 kHz (*Henry C.*)	167.2	NA	NA	3	980
		400 Hz	176.8	NA	NA	9	1,340
Ice Gouging Surveys	Dual freq sub-bottom profiler.	(2–7 kHz & 8–23 kHz	184.6	NA	2	7	456
	Multibeam Echo Sounder	240 kHz	Not modeled/measured because frequency outputs beyond marine mammal hearing range.				
Strudel Scour Survey	Multibeam Echo Sounder	240 kHz	Not modeled/measured because frequency outputs beyond marine mammal hearing range.				
	Single Beam Bathymetric Sonar.	>200 kHz	215	Not modeled/measured because frequency outputs beyond marine mammal hearing range.			

"Take by Harassment" is calculated in this section and Shell's application by multiplying the expected densities of marine mammals that may occur in the site clearance and shallow hazards survey area of water likely to be exposed to airgun impulses with received levels of ≥160 dB re 1 μPa (rms). The single exception to this method is for the

estimation of exposures of bowhead whales during the fall migration where more detailed data were available allowing an alternate approach, described below, to be used. This section describes the estimated densities of marine mammals that may occur in the project area. The area of water that may be ensonified to the above sound levels is described further in the "Potential Number of Takes by Harassment" subsection.

Marine mammal densities near the operation are likely to vary by season and habitat. However, sufficient published data allowing the estimation of separate densities during summer (July and August) and fall (September and October) are only available for beluga and bowhead whales. As noted above, exposures of bowhead whales during the fall are not calculated using densities (see below). Therefore, summer and fall densities have been estimated for beluga whales, and a summer density has been estimated for bowhead whales. Densities of all other species have been estimated to represent the duration of both seasons. The estimated 30 days of site clearance and shallow hazards survey activity will take place in eastern Harrison Bay at approximately five potential prospective future drill sites. The survey lines form a grid or survey "patch." It is expected that three of these patches will be surveyed during the summer and two during the fall. The areas of water exposed to sounds during surveys at the patches are separated by season in this manner and as described further below.

Marine mammal densities are also likely to vary by habitat type. In the Alaskan Beaufort Sea, where the continental shelf break is relatively close to shore, marine mammal habitat is often defined by water depth. Bowhead and beluga occurrence within nearshore (0–131 ft, 0–40 m), outer continental shelf (131–656 ft, 40–200 m), slope (656–6,562 ft, 200–2,000 m), basin (>6,562 ft, 2,000 m), or similarly defined habitats have been described previously (Moore *et al.* 2000; Richardson and Thomson 2002). The presence of most other species has generally only been described relative to the entire continental shelf zone (0–656 ft, 0–200 m) or beyond. Sounds produced by the site clearance and shallow hazards surveys are expected to drop below 160 dB within the nearshore zone (0–131 ft, 0–40 m, water depth). Sounds ≥160 dB are not expected to occur in waters >656 ft (200 m). Because airgun sounds at the indicated levels would not be introduced to the outer continental shelf, separate beluga and bowhead densities for the outer continental shelf have not been used in the calculations.

In addition to water depth, densities of marine mammals are likely to vary with the presence or absence of sea ice (see later for descriptions by species). At times during either summer or fall, pack-ice may be present in some of the area near Harrison Bay. However, because some of the survey equipment towed behind the vessel may be damaged by ice, site clearance and shallow hazards survey activities will generally avoid sea-ice. Therefore, Shell has assumed that only 10% of the area exposed to sounds ≥160 dB by the survey will be near ice margin habitat. Ice-margin densities of marine mammals in both seasons have therefore been multiplied by 10% of the area exposed to sounds by the airguns, while open-water (nearshore) densities have been multiplied by the remaining 90% of the area (see area calculations below).

To provide some allowance for the uncertainties, Shell calculated both "maximum estimates" as well as "average estimates" of the numbers of marine mammals that could potentially be affected. For a few marine mammal species, several density estimates were available, and in those cases the mean and maximum estimates were determined from the survey data. In other cases, no applicable estimate (or perhaps a single estimate) was available, so correction factors were used to arrive at "average" and "maximum" estimates. These are described in detail in the following subsections. NMFS has determined that the average density data of marine mammal populations will be used to calculate estimated take numbers because these numbers are based on surveys and monitoring of marine mammals in the vicinity of the proposed project area. For several species whose average densities are too low to yield a take number due to extra-limital distribution in the vicinity of the proposed survey area, but whose chance occurrence has been documented in the past, such as gray and humpback whales and harbor porpoises, NMFS allotted a few numbers of these species to allow unexpected takes of these species.

Detectability bias, quantified in part by f(0), is associated with diminishing sightability with increasing lateral distance from the trackline. Availability bias [g(0)] refers to the fact that there is <100% probability of sighting an animal that is present along the survey trackline. Some sources of densities used below included these correction factors in their reported densities. In other cases the best available correction factors were applied to reported results when they had not been included in the reported data (*e.g.* Moore *et al.* 2000b).

(1) Cetaceans

As noted above, the densities of beluga and bowhead whales present in the Beaufort Sea are expected to vary by season and location. During the early and mid-summer, most belugas and bowheads are found in the Canadian Beaufort Sea and Amundsen Gulf or adjacent areas. Low numbers are found in the eastern Alaskan Beaufort Sea. Belugas begin to move across the Alaskan Beaufort Sea in August, and bowheads do so toward the end of August.

Beluga Whales—Beluga density estimates were derived from data in Moore *et al.* (2000). During the summer, beluga whales are most likely to be encountered in offshore waters of the eastern Alaskan Beaufort Sea or areas with pack ice. The summer beluga whale nearshore density was based on 11,985 km (7,749 mi) of on-transect effort and 9 associated sightings that occurred in water ≤50 m (164 ft) in Moore *et al.* (2000; Table 2). A mean group size of 1.63, a f(0) value of 2.841, and a g(0) value of 0.58 from Harwood *et al.* (1996) were also used in the calculation. Moore *et al.* (2000) found that belugas were equally likely to occur in heavy ice conditions as open water or very light ice conditions in summer in the Beaufort Sea, so the same density was used for both nearshore and ice-margin estimates (Table 2). The fall beluga whale nearshore density was based on 72,711 km (45,190 mi) of on-transect effort and 28 associated sightings that occurred in water ≤50 m (164 ft) reported in Moore *et al.* (2000). A mean group size of 2.9 (CV=1.9), calculated from all Beaufort Sea fall beluga sightings in ≤50 m (164 ft) of water present in the MMS Bowhead Whale Aerial Survey Program (BWASP) database, along with the same f(0) and g(0) values from Harwood *et al.* (1996) were also used in the calculation. Moore *et al.* (2000) found that during the fall in the Beaufort Sea belugas occurred in moderate to heavy ice at higher rates than in light ice, so ice-margin densities were estimated to be twice the nearshore densities. Based on the CV of group size maximum estimates in both season and habitats were estimated as four times the average estimates. "Takes by harassment" of beluga whales during the fall in the Beaufort Sea were not calculated in the same manner as described for bowhead whales (below) because of the relatively lower expected densities of beluga whales in nearshore habitat near the site clearance and shallow hazards surveys and the lack of

detailed data on the likely timing and rate of migration through the area (Table 3).

TABLE 2—EXPECTED SUMMER (JUL–AUG) DENSITIES OF BELUGA AND BOWHEAD WHALES IN THE ALASKAN BEAUFORT SEA. DENSITIES ARE CORRECTED FOR F(0) AND G(0) BIASES

Species	Nearshore Average Density (#/km^2)	Ice Margin Average Density (#/km^2)
Beluga whale	0.0030	0.0030
Bowhead whale	0.0186	0.0186

TABLE 3—EXPECTED FALL (SEP–NOV) DENSITIES OF BELUGA AND BOWHEAD WHALES IN THE ALASKAN BEAUFORT SEA. DENSITIES ARE CORRECTED FOR F(0) AND G(0) BIASES

Species	Nearshore Average Density (#/km^2)	Ice Margin Average Density (#/km^2)
Beluga whale	0.0027	0.0054
Bowhead whale*	N/A	N/A

**See* text for description of how bowhead whales estimates were made.

Bowhead Whales—Industry aerial surveys of the continental shelf near Camden Bay in 2008 recorded eastward migrating bowhead whales until July 12 (Lyons and Christie 2009). No bowhead sightings were recorded again, despite continued flights, until August 19. Aerial surveys by industry operators did not begin until late August of 2006 and 2007, but in both years bowheads were also recorded in the region before the end of August (Christie *et al.* 2009). The late August sightings were likely of bowheads beginning their fall migration so the densities calculated from those surveys were not used to estimate summer densities in this region. The three surveys in July 2008, resulted in density estimates of 0.0099, 0.0717, and 0.0186 whales/km^2, respectively. The estimate of 0.0186 whales/km^2 was used as the average nearshore density, and the estimate of 0.0717 whales/km^2 was used as the maximum (Table 2). Sea ice was not present during these surveys. Moore *et al.* (2000) reported that bowhead whales in the Alaskan Beaufort Sea were distributed uniformly relative to sea ice, so the same nearshore densities were used for ice-margin habitat.

During the fall most bowhead whales will be migrating west past the site clearance and shallow hazards surveys, so it is less accurate to assume that the number of individuals present in the area from one day to the next will be static. However, feeding, resting, and milling behaviors are not entirely uncommon at this time and location either. In order to incorporate the movement of whales past the planned operations, and because the necessary data are available, Shell has developed an alternate method of calculating the number of individuals exposed to sounds produced by the site clearance and shallow hazards surveys. The method is founded on estimates of the proportion of the population that would pass within the ≥160 dB rms zones on a given day in the fall during survey activities.

Approximately 10 days of site clearance and shallow hazards survey activity are likely to occur during the fall period when bowheads are migrating through the Beaufort Sea. If the bowhead population has continued to grow at an annual rate of 3.4%, the current population size would be approximately 14,247 individuals based on a 2001 population of 10,545 (Zeh and Punt 2005). Based on data in Richardson and Thomson (2002, Appendix 9.1), the number of whales expected to pass each day was estimated as a proportion of the population. Minimum and maximum estimates of the number of whales passing each day were not available, so a single estimate based on the 10-day moving average presented by Richardson and Thomson (2002) was used. Richardson and Thomson (2002) also calculated the proportion of animals within water depth bins (<20 m, 20–40 m, 40–200 m, >200 m; or <65 ft, 65–131 ft, 131–656 ft, >656 ft). Using this information the total number of whales expected to pass the site clearance and shallow hazards surveys each day was multiplied by the proportion of whales that would be in each depth category to estimate how many individuals would be within each depth bin on a given day. The proportion of each depth bin falling within the ≥160 dB rms zone was then multiplied by the number of whales within the respective bins to estimate the total number of individuals that would be exposed on each day. This was repeated for a total of 10 days (September 15–19 and October 1–4) and the results were summed to estimate the total number of bowhead whales that might be exposed to ≥160 dB rms during the migration period in the Beaufort Sea.

Other Cetaceans—For other cetacean species that may be encountered in the Beaufort Sea, densities are likely to vary somewhat by season, but differences are not expected to be great enough to require estimation of separate densities for the two seasons. Harbor porpoises and gray whales are not expected to be present in large numbers in the Beaufort Sea during the fall but small numbers may be encountered during the summer. They are most likely to be present in nearshore waters (Table 4). Narwhals are not expected to be encountered during the site clearance and shallow hazards surveys. However, there is a chance that a few individuals may be present if ice is nearby. The first record of humpback whales in the Beaufort Sea was documented in 2007 so their presence cannot be ruled out. Since these species occur so infrequently in the Beaufort Sea, little to no data are available for the calculation of densities. Minimal densities have therefore been assigned for calculation purposes and to allow for chance encounters (Table 4).

TABLE 4—EXPECTED DENSITIES OF CETACEANS (EXCLUDING BELUGA AND BOWHEAD WHALE) AND SEALS IN THE ALASKAN BEAUFORT SEA

Species	Nearshore Average Density (#/km^2)	Ice Margin Average Density (#/km^2)
Narwhal	0.0000	0.0000
Harbor porpoise	0.0001	0.0000
Gray whale	0.0001	0.0000
Bearded seal	0.0181	0.0128
Ribbon seal	0.0001	0.0001
Ringed seal	0.3547	0.2510
Spotted seal	0.0037	0.0001

(2) Pinnipeds

Extensive surveys of ringed and bearded seals have been conducted in the Beaufort Sea, but most surveys have been conducted over the landfast ice, and few seal surveys have occurred in open-water or in the pack ice. Kingsley (1986) conducted ringed seal surveys of the offshore pack ice in the central and eastern Beaufort Sea during late spring (late June). These surveys provide the most relevant information on densities of ringed seals in the ice margin zone of the Beaufort Sea. The density estimate in Kingsley (1986) was used as the average density of ringed seals that may be encountered in the ice margin (Table 6–3 in Shell's application and Table 4 here). The average ringed seal density in the nearshore zone of the Alaskan Beaufort Sea was estimated from results of ship-based surveys at times without seismic operations reported by Moulton and Lawson (2002; Table 6–3 in Shell's application and Table 4 here).

Densities of bearded seals were estimated by multiplying the ringed seal densities by 0.051 based on the proportion of bearded seals to ringed seals reported in Stirling *et al.* (1982; Table 6–3 in Shell's application and Table 4 here). Spotted seal densities in the nearshore zone were estimated by summing the ringed seal and bearded seal densities and multiplying the result by 0.015 based on the proportion of spotted seals to ringed plus bearded seals reported in Moulton and Lawson (2002; Table 6–3 in Shell's application and Table 4 here). Minimal values were assigned as densities in the ice–margin zones (Table 6–3 in Shell's application and Table 4 here).

Potential Number of Takes by Harassment

Numbers of marine mammals that might be present and potentially disturbed are estimated below based on available data about mammal distribution and densities at different locations and times of the year as described previously. The planned site clearance and shallow hazards survey would take place in the Beaufort Sea over two different seasons. The estimates of marine mammal densities have therefore been separated both spatially and temporarily in an attempt to represent the distribution of animals expected to be encountered over the duration of the site clearance and shallow hazards survey.

The number of individuals of each species potentially exposed to received levels ≥160 dB re 1μPa (rms) within each season and habitat zone was estimated by multiplying

- The anticipated area to be ensonified to the specified level in each season and habitat zone to which that density applies, by
- The expected species density.

The numbers of potential individuals exposed were then summed for each species across the two seasons and habitat zones. Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to ≥160 dB re 1 μPa (rms). Thus, these calculations actually estimate the number of individuals potentially exposed to ≥160 dB that would occur if there were no avoidance of the area ensonified to that level.

The area of water potentially exposed to received levels ≥160 dB re 1μPa (rms) by airgun operations was calculated by buffering a typical site clearance and shallow hazards survey grid of lines by the estimated >160 dB distance from the airgun source, including turns between lines during which a single mitigation airgun will be active. Measurements of a 2×10 in^3 airgun array used in 2007 were reported by Funk *et al.* (2008). These measurements were used to model both of the potential airgun arrays that may be used in 2010, a 4×10 in^3 array or a 2×10 in^3 + 1×20 in^3 array. The modeling results showed that the 40 cubic inch source is likely to produce sound that propagates further than the alternative array, so those results were used. The modeled 160 dB re 1μPa (rms) distance from a 40 cubic inch source was 1,220 m (4,003 ft) from the source. Because this is a modeled estimate, but based on similar measurements at the same location, the estimated distance was only increased by a factor of 1.25 instead of a typical 1.5 factor. This results in a 160 dB distance of 1,525 m (5,003 ft) which was added to both sides of survey lines in a typical site clearance and shallow hazards survey grid. The resulting area that may be exposed to airgun sounds ≥160 dB re 1μPa (rms) is 81.6 km^2. In most cases the use of a single mitigation gun during turns will not appreciably increase the total area exposed to sounds ≥160 dB re 1μPa (rms), but analysis of a similar survey pattern from the Chukchi Sea (but using the Beaufort sound radii) suggested use of the mitigation gun may increase this area to 82.3 km^2. As described above, three patches (246.9 km^2) are likely to be surveyed during the summer leaving two (164.6 km^2) for the fall. During both seasons, 90% of the area has been multiplied by nearshore (open-water) densities, and the remaining 10% by the ice-margin densities.

For analysis of potential effects on migrating bowhead whales we calculated the maximum distance perpendicular to the migration path ensonified to ≥160 dB re 1μPa (rms) by a typical survey patch as 11.6 km (7.2 mi). This distance represents approximately 21% of the 56 km (34.8 mi) between the barrier islands and the 40-m (131-ft) bathymetry line so it was assumed that 21% of the bowheads migrating within the nearshore zone (water depth 0–40 m, or 0–131 ft) may be exposed to sounds ≥160 dB re 1μPa (rms) if they showed no avoidance of the site clearance and shallow hazards survey activities.

Cetaceans—Cetacean species potentially exposed to airgun sounds with received levels ≥160 dB re 1μPa (rms) would involve bowhead, gray, humpback, and beluga whales and harbor porpoises. Shell also included some maximum exposure estimates for narwhal and minke whale. However, as stated previously in this document, NMFS has determined that authorizing take of these two cetacean species is not warranted given the highly unlikely potential of these species to occur in the open water marine survey area. The average estimates of the number of individual bowhead whales exposed to received sound levels ≥160 dB re 1μPa (rms) is 381 and belugas is 1 individual. However, since beluga whales often form small groups, therefore, it's likely that the exposure to the animals would be based on groups instead of individual animals. Therefore, NMFS proposes to make an adjustment to increase the number of beluga whale takes to 5 individuals to reflect the aggregate nature of these animals.

The estimates show that one endangered cetacean species (the bowhead whale) is expected to be exposed to sounds ≥160 dB re 1μPa (rms) unless bowheads avoid the area around the site clearance and shallow hazards survey areas (Tables 4). Migrating bowheads are likely to do so to some extent, though many of the bowheads engaged in other activities, particularly feeding and socializing, probably will not.

As discussed before, although no take estimates of gray and humpback whales and harbor porpoises can be calculated due to their low density and extralimital distribution in the vicinity of the site clearance and shallow hazards survey area, their occurrence has been documented in the past. Therefore, to allow for chance encounters of these species, NMFS proposes to include two individuals of each of these three species as having the potential to be exposed to an area with received levels ≥160 dB re 1μPa (rms).

Pinnipeds—The ringed seal is the most widespread and abundant pinniped in ice-covered arctic waters, and there appears to be a great deal of year-to-year variation in abundance and distribution of these marine mammals. Ringed seals account for a large number of marine mammals expected to be encountered during the site clearance and shallow hazard survey activities, and hence exposed to sounds with received levels ≥160 dB re 1μPa (rms). The average estimate is that 567 ringed seals might be exposed to sounds with received levels ≥160 dB re 1μPa (rms) from airgun impulses.

Two additional seal species are expected to be encountered. Average estimates for bearded seal exposures to sound levels ≥160 dB re 1μPa (rms) is 7 individuals. For spotted seal the exposure estimates is 1 individual.

Table 5 summarizes the number of potential takes by harassment of all species.

TABLE 5—SUMMARY OF THE NUMBER OF POTENTIAL EXPOSURES OF MARINE MAMMALS TO RECEIVED SOUND LEVELS IN THE WATER OF ≥160 dB DURING SHELL'S PLANNED SITE CLEARANCE AND SHALLOW HAZARDS SURVEYS NEAR HARRISON BAY IN THE BEAUFORT SEA, ALASKA, JULY–OCTOBER, 2010

Species	Total number of exposures to sound levels ≥160 dB re 1 μPa (rms)
Beluga whale	5
Harbor porpoise	2
Bowhead whale	381
Gray whale	2
Humpback whale	2
Bearded seal	7
Ringed seal	142
Spotted seal	1

Estimated Take Conclusions

Cetaceans—Effects on cetaceans are generally expected to be restricted to avoidance of an area around the site clearance and shallow hazards surveys and short-term changes in behavior, falling within the MMPA definition of "Level B harassment."

Using the 160 dB criterion, the average estimates of the numbers of individual cetaceans exposed to sounds ≥160 dB re 1 μPa (rms) represent varying proportions of the populations of each species in the Beaufort Sea and adjacent waters. For species listed as "Endangered" under the ESA, the estimates include approximately 381 bowheads. This number is approximately 2.7% of the Bering-Chukchi-Beaufort population of >14,247 assuming 3.4% annual population growth from the 2001 estimate of >10,545 animals (Zeh and Punt 2005). The small numbers of other mysticete whales that may occur in the Beaufort Sea are unlikely to occur near the planned site clearance and shallow hazards surveys. The few that might occur would represent a very small proportion of their respective populations. The average estimate of the number of belugas that might be exposed to ≥160 dB re 1 μPa (rms) (1, with adjustment to 5 considering group occurrence) represents <1% of its population.

Seals—A few seal species are likely to be encountered in the study area, but ringed seal is by far the most abundant in this area. The average estimates of the numbers of individuals exposed to sounds at received levels ≥160 dB re 1 μPa (rms) during the site clearance and shallow hazards surveys are as follows: ringed seals (142), bearded seals (7), and spotted seals (1), (representing <1% of their respective Beaufort Sea populations).

Negligible Impact and Small Numbers Analysis and Preliminary 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 a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, 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 Shell's proposed 2010 open water marine surveys in the Beaufort and Chukchi Seas, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. Takes will be limited to Level B behavioral harassment. Although it is possible that some individuals of marine mammals may be exposed to sounds from marine survey activities more than once, the expanse of these multi-exposures are expected to be less extensive since both the animals and the survey vessels will be moving constantly in and out the survey areas.

Some studies have shown that bowhead whales will continue to feed in areas of seismic operations (*e.g.,* Richardson, 2004). Therefore, it is reasonable to conclude that the marine surveys using active acoustic sources will not displace bowhead whales from their important feeding areas. Also, it is important to note that the sounds produced by the proposed Shell marine surveys are of much lower intensity than those produced by airgun arrays during a 3D or 2D seismic survey. Should bowheads choose to feed in the ensonified area instead of avoiding the sound, individuals may be exposed to sounds at or above 160 dB re 1 μPa (rms) when the survey vessel passes by. Depending on the direction and speed of the survey vessel, the duration of exposure is not expected to be more than 15 minutes (assuming the survey vessel is traveling at 4 knots (7.5 km/hr) and heading directly towards the whale but without engaging the whale inside the safety zone). While feeding in an area of increased anthropogenic sound even below NMFS current threshold for behavioral harassment for impulse sound, *i.e.* 160 dB re 1 μPa (rms), may potentially result in increased stress, it is not anticipated that the low received levels from marine surveys and the amount of time that an individual whale may remain in the area to feed would result in extreme physiological stress to the animal (*see* review by Southall *et al.* 2007). Additionally, if an animal is excluded from the area (such as Harrison Bay) for feeding because it decides to avoid the ensonified area, this may result in some extra energy expenditure for the animal to find an alternate feeding area. However, there are multiple feeding areas nearby in the Beaufort Sea for bowhead whales to choose from. The disruption to feeding is not anticipated to have more than a negligible impact on the affected species or stock.

Beluga whales are less likely to occur in the proposed marine survey area than bowhead whales in Beaufort Sea. Should any belugas occur in the area of marine surveys, it is not expected that they would be exposed for a prolonged period of time, for the same reason discussed above due to the movement of survey vessel and animals. Gray whales, humpback whales, and harbor porpoises rarely occur in the Beaufort Sea, therefore, the potential effects to these species from the proposed open water marine surveys is expected to be close to none. The exposure of cetaceans to sounds produced by the proposed marine surveys is not expected to result in more than Level B harassment and is anticipated to have no more than a negligible impact on the affected species or stock.

Some individual pinnipeds may be exposed to sound from the proposed marine surveys more than once during the time frame of the project. However, as discussed previously, due to the constant moving of the survey vessel, the probability of an individual pinniped being exposed to multiple times is much lower than if the source is stationary. Therefore, NMFS has preliminarily determined that the exposure of pinnipeds to sounds produced by the proposed marine surveys in the Beaufort and Chukchi Seas is not expected to result in more than Level B harassment and is anticipated to have no more than a negligible impact on the animals.

Of the eight marine mammal species likely to occur in the proposed marine survey area, only the bowhead and humpback whales are listed as endangered under the ESA. The species are also designated as "depleted" under the MMPA. Despite these designations, the Bering-Chukchi-Beaufort stock of bowheads has been increasing at a rate

of 3.4 percent annually for nearly a decade (Allen and Angliss, 2010). Additionally, during the 2001 census, 121 calves were counted, which was the highest yet recorded. The calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss, 2010). The occurrence of humpback whales in the proposed marine survey areas is considered very rare. There is no critical habitat designated in the U.S. Arctic for the bowhead whale and humpback whale. The bearded and ringed seals are "candidate species" under the ESA, meaning they are currently being considered for listing but are not designated as depleted under the MMPA. None of the other three species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

Potential impacts to marine mammal habitat were discussed previously in this document (see the "Anticipated Effects on Habitat" section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect rates of recruitment or survival of marine mammals in the area. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere.

The estimated takes proposed to be authorized represent 0.01% of the Beaufort Sea population of approximately 39,258 beluga whales (Allen and Angliss 2010), 0.004% of Bering Sea stock of approximately 48,215 harbor porpoises, 0.01% of the Eastern North Pacific stock of approximately 17,752 gray whales, 2.67% of the Bering-Chukchi-Beaufort population of 14,247 individuals assuming 3.4 percent annual population growth from the 2001 estimate of 10,545 animals (Zeh and Punt, 2005), and 0.21% of the Western North Pacific stock of approximately 938 humpback whales. The take estimates presented for bearded, ringed, and spotted seals represent 0.003, 0.06, and 0.002 percent of U.S. Arctic stocks of each species, respectively. These estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. In addition, the mitigation and monitoring measures (described previously in this document) proposed for inclusion in the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals.

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 preliminarily finds that Shell's proposed 2010 open water marine surveys in the Beaufort and Chukchi Seas may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine surveys will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Relevant Subsistence Uses

The disturbance and potential displacement of marine mammals by sounds from the proposed marine surveys are the principal concerns related to subsistence use of the area. Subsistence remains the basis for Alaska Native culture and community. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. Additionally, the animals taken for subsistence provide a significant portion of the food that will last the community throughout the year. The main species that are hunted include bowhead and beluga whales, ringed, spotted, and bearded seals, walruses, and polar bears. (As mentioned previously in this document, both the walrus and the polar bear are under the USFWS' jurisdiction.) The importance of each of these species varies among the communities and is largely based on availability.

The subsistence communities in the Beaufort and Chukchi Seas that have the potential to be impacted by Shell's proposed open water marine surveys include Kaktovik, Nuiqsut, Barrow, Wainwright, and Point Lay. Kaktovik is a coastal community near the east boundary of the proposed ice gouging area. Nuiqsut is approximately 30 mi (50 km) inland from the proposed site clearance and shallow hazards survey area. Cross Island, from which Nuiqsut hunters base their bowhead whaling activities, is approximately 44 mi (70 km) east of the proposed site clearance and shallow hazards survey area. Barrow lies approximately 168 mi (270 km) west of Shell's Harrison Bay site clearance and shallow hazards survey areas. Wainwright is a coastal community approximately 12 mi (20 km) to the southeast boundary of the proposed ice gouging survey area in the Chukchi Sea. Point Lay is another coastal community boarding the southwest boundary of the proposed ice gouging survey area in the Chukchi Sea. Point Hope is the western tip of the North Slope and is approximately 124 mi (200 km) southwest of Shell's proposed ice gouge survey area in the Chukchi Sea.

(1) Bowhead Whales

Of the three communities along the Beaufort Sea coast, Barrow is the only one that currently participates in a spring bowhead whale hunt. However, this hunt is not anticipated to be affected by Shell's activities, as the spring hunt occurs in late April to early May, and Shell's marine surveys in Beaufort Sea will not begin until July at the earliest.

All three communities participate in a fall bowhead hunt. In autumn, westward-migrating bowhead whales typically reach the Kaktovik and Cross Island (Nuiqsut hunters) areas by early September, at which point the hunts begin (Kaleak 1996; Long 1996; Galginaitis and Koski 2002; Galginaitis and Funk 2004, 2005; Koski *et al.* 2005). Around late August, the hunters from Nuiqsut establish camps on Cross Island from where they undertake the fall bowhead whale hunt. The hunting period starts normally in early September and may last as late as mid-October, depending mainly on ice and weather conditions and the success of the hunt. Most of the hunt occurs offshore in waters east, north, and northwest of Cross Island where bowheads migrate and not inside the barrier islands (Galginaitis 2007). Hunters prefer to take bowheads close to shore to avoid a long tow, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 50 mi (80 km) offshore. Whaling crews use Kaktovik as their home base, leaving the village and returning on a daily basis. The core whaling area is within 12 mi (19.3 km) of the village with a periphery ranging about 8 mi (13 km) farther, if necessary. The extreme limits of the Kaktovik whaling hunt would be the middle of Camden Bay to the west. The timing of the Kaktovik bowhead whale hunt roughly parallels the Cross Island whale hunt (Impact Assessment Inc 1990b; SRB&A 2009: Map 64). In recent years, the hunts at Kaktovik and Cross Island have usually ended by mid- to late September.

Westbound bowheads typically reach the Barrow area in mid-September, and are in that area until late October (Brower 1996). However, over the years, local residents report having seen a small number of bowhead whales feeding off Barrow or in the pack ice off Barrow during the summer. Recently, autumn bowhead whaling near Barrow has normally begun in mid-September to early October, but in earlier years it began as early as August if whales were observed and ice conditions were favorable (USDI/BLM 2005). The recent decision to delay harvesting whales until mid-to-late September has been made to prevent spoilage, which might occur if whales were harvested earlier in the season when the temperatures tend to be warmer. Whaling near Barrow can continue into October, depending on the quota and conditions.

Along the Chukchi Sea, the spring bowhead whale hunt for Wainwright occurs between April and June in leads offshore from the village. Whaling camps can be located up to 16–24 km (10–15 mi) from shore, depending on where the leads open up. Whalers prefer to be closer, however, and will sometimes go overland north of Wainwright to find closer leads (SRBA 1993). Residents of Point Lay have not hunted bowhead whales in the recent past, but were selected by the International Whaling Commission (IWC) to receive a bowhead whale quota in 2009, and began bowhead hunting again in 2009. In the more distant past, Point Lay hunters traveled to Barrow, Wainwright, or Point Hope to participate in the bowhead whale harvest activities. In Point Hope, the bowhead whale hunt occurs between March and June, when the pack-ice lead is usually 10–11 km (6–7 mi) offshore. Camps are set up along the landfast ice edge to the south and southeast of the village. Point Hope whalers took between one and seven bowhead whales per year between 1978 and 2008, with the exception of 1980, 1989, 2002, and 2006, when no whales were taken (Suydam and George 2004; Suydam *et al.* 2008, 2007, 2006, 2005). There is no fall bowhead hunt in Point Hope, as the whales migrate back down on the west side of the Bering Strait, out of range of the Point Hope whalers (Fuller and George 1997).

(2) Beluga Whales

Beluga whales are not a prevailing subsistence resource in the communities of Kaktovik and Nuiqsut. Kaktovik hunters may harvest one beluga whale in conjunction with the bowhead hunt; however, it appears that most households obtain beluga through exchanges with other communities. Although Nuiqsut hunters have not hunted belugas for many years while on Cross Island for the fall hunt, this does not mean that they may not return to this practice in the future. Data presented by Braund and Kruse (2009) indicate that only one percent of Barrow's total harvest between 1962 and 1982 was of beluga whales and that it did not account for any of the harvested animals between 1987 and 1989.

There has been minimal harvest of beluga whales in Beaufort Sea villages in recent years. Additionally, if belugas are harvested, it is usually in conjunction with the fall bowhead harvest. Shell will not be operating during the Kaktovik and Nuiqsut fall bowhead harvests.

In the Chukchi communities, the spring beluga hunt by Wainwright residents is concurrent with the bowhead hunt, but belugas are typically taken only during the spring hunt if bowheads are not present in the area. Belugas are also hunted later in the summer, between July and August, along the coastal lagoon systems. Belugas are usually taken less than 16 km (10 mi) from shore. Beluga whales are harvested in June and July by Point Lay residents. They are taken in the highest numbers in Naokak and Kukpowruk Passes south of Point Lay, but hunters will travel north to Utukok Pass and south to Cape Beaufort in search of belugas. The whales are usually herded by hunters with their boats into the shallow waters of Kasegaluk Lagoon (MMS 2007). In Point Hope, belugas are also hunted in the spring, coincident with the spring bowhead hunt. A second hunt takes place later in the summer, in July and August, and can extend into September, depending on conditions and the IWC quota. The summer hunt is conducted in open water along the coastline on either side of Point Hope, as far north as Cape Dyer (MMS 2007). Belugas are smaller than bowhead whales, but beluga whales often make up a significant portion of the total harvest for Point Hope (Fuller and George 1997; SRBA 1993). Ninety-eight belugas harvested in 1992 made up 40.3% of the total edible harvest for that year. Three bowhead whales represented 6.9% of the total edible harvest for the same year (Fuller and George 1997).

(3) Ice Seals

Ringed seals are available to subsistence users in the Beaufort Sea year-round, but they are primarily hunted in the winter or spring due to the rich availability of other mammals in the summer. Bearded seals are primarily hunted during July in the Beaufort Sea; however, in 2007, bearded seals were harvested in the months of August and September at the mouth of the Colville River Delta. An annual bearded seal harvest occurs in the vicinity of Thetis Island in July through August. Approximately 20 bearded seals are harvested annually through this hunt. Spotted seals are harvested by some of the villages in the summer months. Nuiqsut hunters typically hunt spotted seals in the nearshore waters off the Colville River delta, which drains into Harrison Bay, where Shell's proposed site clearance and shallow hazards surveys are planned.

Although there is the potential for some of the Beaufort villages to hunt ice seals during the summer and fall months while Shell is conducting marine surveys, the primary sealing months occur outside of Shell's operating time frame.

In the Chukchi Sea, seals are most often taken between May and September by Wainwright residents. Wainwright hunters will travel as far south as Kuchaurak Creek (south of Point Lay) and north to Peard Bay. Hunters typically stay within 72 km (45 mi) of the shore. Ringed and bearded seals are harvested all year by Point Lay hunters. Ringed seals are hunted 32 km (20 mi) north of Point Lay, as far as 40 km (25 mi) offshore. Hunters travel up to 48 m (30 mi) north of the community for bearded seals, which are concentrated in the Solivik Island area. Bearded seals are also taken south of the community in Kasegaluk Lagoon, and as far as 40 km (25 mi) from shore. Seals are harvested throughout most of the year by the Point Hope community, although they tend to be taken in the greatest numbers in the winter and spring months. The exception is the bearded seal hunt, which peaks later in the spring and into the summer (Fuller and George 1997; MMS 2007). Species of seals harvested by Point Hope hunters include ringed, spotted, and bearded. Seals are hunted on the ice (Fuller and George 1997). Hunters tend to stay close to the shore but will travel up to 24 km (15 mi) offshore south of the point, weather dependent. Seals are hunted to the north of the community as well, but less often, as the ice is less stable and can be dangerous. Seals are taken between Akoviknak Lagoon to the south and Ayugatak Lagoon to the north (MMS 2007).

Potential Impacts to Subsistence Uses

NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as:

* * *an impact resulting from the specified activity: (1) That is likely to reduce

the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Noise and general activity during Shell's proposed open water marine surveys have the potential to impact marine mammals hunted by Native Alaskans. In the case of cetaceans, the most common reaction to anthropogenic sounds (as noted previously in this document) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals divert from their normal migratory path by several kilometers. Additionally, general vessel presence in the vicinity of traditional hunting areas could negatively impact a hunt.

In the case of subsistence hunts for bowhead whales in the Beaufort and Chukchi Seas, there could be an adverse impact on the hunt if the whales were deflected seaward (further from shore) in traditional hunting areas. The impact would be that whaling crews would have to travel greater distances to intercept westward migrating whales, thereby creating a safety hazard for whaling crews and/or limiting chances of successfully striking and landing bowheads.

Plan of Cooperation (POC or Plan)

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

Shell is preparing to implement a POC pursuant to MMS Lease Sale Stipulation No. 5, which requires that all exploration operations be conducted in a manner that prevents unreasonable conflicts between oil and gas activities and the subsistence activities and resources of residents of the North Slope.

The POC will identify the measures that Shell has developed in consultation with North Slope subsistence communities and will implement during its planned 2010 site clearance and shallow hazards surveys and ice gouge surveys to minimize any adverse effects on the availability of marine mammals for subsistence uses. In addition, the POC will detail Shell's communications and consultations with local subsistence communities concerning its planned 2010 program, potential conflicts with subsistence activities, and means of resolving any such conflicts. Shell continues to document its contacts with the North Slope subsistence communities, as well as the substance of its communications with subsistence stakeholder groups.

Shell states that the POC will be, and has been in the past, the result of numerous meetings and consultations between Shell, affected subsistence communities and stakeholders, and federal agencies. The POC identifies and documents potential conflicts and associated measures that will be taken to minimize any adverse effects on the availability of marine mammals for subsistence use. Outcomes of POC meetings are typically included in updates attached to the POC as addenda and distributed to federal, state, and local agencies as well as local stakeholder groups that either adjudicate or influence mitigation approaches for Shell's open water programs.

Meetings for Shell's 2010 program in the Beaufort and Chukchi Seas are planned for Nuiqsut, Kaktovik, Barrow, Point Hope, Point Lay, Wainwright, and Kotzebue in the 1st quarter of 2010. Shell met with the marine mammal commissions and committees including the Alaska Eskimo Whaling Commission (AEWC), Eskimo Walrus Commission (EWC), Alaska Beluga Whale Committee (ABWC), Alaska Ice Seal Committee (AISC), and the Alaska Nanuuq Commission (ANC) on December 8, 2009 in co-management meeting. Throughout 2010 Shell anticipates continued engagement with the marine mammal commissions and committees active in the subsistence harvests and marine mammal research.

Following the 2010 season, Shell intends to have a post-season co-management meeting with the commissioners and committee heads to discuss results of mitigation measures and outcomes of the preceding season. The goal of the post-season meeting is to build upon the knowledge base, discuss successful or unsuccessful outcomes of mitigation measures, and possibly refine plans or mitigation measures if necessary.

Subsistence Mitigation Measures

Shell plans to introduce the following mitigation measures, plans and programs to potentially affected subsistence groups and communities. These measures, plans, and programs have been effective in past seasons of work in the Arctic and were developed in past consultations with these communities. These measures, plans, and programs will be implemented by Shell during its 2010 program in both the Beaufort and Chukchi Seas to monitor and mitigate potential impacts to subsistence users and resources. The mitigation measures Shell has adopted and will implement during 2010 are listed and discussed below.

Shell states that it will implement the following additional measures to ensure coordination of its activities with local subsistence users to minimize further the risk of impacting marine mammals and interfering with any subsistence hunts:

- To minimize impacts on marine mammals and subsistence hunting activities, the source vessel will transit through the Chukchi Sea along a route that lies offshore of the polynya zone. This entry into the Chukchi Sea will not occur before July 1, 2010. In the event the transit outside of the polynya zone results in Shell having to move away from ice, the source vessel may enter into the polynya zone. If it is necessary to move into the polynya zone, Shell will notify the local communities of the change in the transit route through the Com Centers.
- Shell has developed a Communication Plan and will implement the plan before initiating the 2010 program to coordinate activities with local subsistence users as well as Village Whaling Associations in order to minimize the risk of interfering with subsistence hunting activities, and keep current as to the timing and status of the bowhead whale migration, as well as the timing and status of other subsistence hunts. The Communication Plan includes procedures for coordination with Communication and Call Centers to be located in coastal villages along the Beaufort and Chukchi Seas during Shell's program in 2010.
- Shell will employ local Subsistence Advisors from the Beaufort and Chukchi Sea villages to provide consultation and guidance regarding the whale migration and subsistence hunt. There may be up nine subsistence advisor-liaison positions (one per village), to work approximately 8-hours per day and 40-hour weeks through Shell's 2010 program. The subsistence advisor will use local knowledge (Traditional Knowledge) to gather data on subsistence lifestyle within the community and advise as to ways to minimize and mitigate potential impacts to subsistence resources during program activities. Responsibilities include reporting any subsistence concerns or conflicts; coordinating with subsistence users; reporting subsistence-related comments, concerns, and information;

and advising how to avoid subsistence conflicts. A subsistence advisor handbook will be developed prior to the operational season to specify position work tasks in more detail.

• Shell will also implement flight restrictions prohibiting aircraft from flying within 1,000 ft (300 m) of marine mammals or below 1,500 ft (457 m) altitude (except during takeoffs and landings or in emergency situations) while over land or sea.

Unmitigable Adverse Impact Analysis and Preliminary Determination

NMFS has preliminarily determined that Shell's proposed 2010 open water marine surveys in the Beaufort and Chukchi Seas will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. This preliminary determination is supported by information contained in this document and Shell's POC. Shell has adopted a spatial and temporal strategy for its Arctic open water marine surveys that should minimize impacts to subsistence hunters, which is discussed in detail below, broken into different subsistence activities.

(1) Bowhead Whales

During the proposed period of activity (July through October) most marine mammals are expected to be dispersed throughout the area, except during the peak of the bowhead whale migration in the Beaufort Sea, which occurs from late August into October. Bowhead whales are expected to be in the Canadian Beaufort Sea during much of the time prior to subsistence whaling and, therefore, are not expected to be affected by the site clearance and shallow hazard surveys prior to then. Further, site clearance and shallow hazards surveys will be conducted over 50–100 mi (80–160 km) west of the furthest west boundary of the traditional bowhead hunting waters used by Kaktovik hunters, 10–50 mi (16–80 km) west of Cross Island from where Nuiqsut hunters base their harvest, and over 35 miles east of the furthest east boundary of the traditional bowhead hunting waters used by Barrow hunters. In light of the small sound source for these surveys and resulting ensonified area > 160 dB (1,525 m) described previously in this document, the sheer distances from where these site clearance and shallow hazard surveys will occur from the areas of Kaktovik and Barrow bowhead hunts serve to mitigate any prospect of impact to the hunts. Site clearance and shallow hazard surveys will be timed to occur beyond the traditional boundary of Nuiqsut hunts, besides occurring 10–50 mi (16–80 km) west of Cross Island and "downstream" of this bowhead whale hunt, thereby mitigating the prospect of impact to Nuiqsut whaling. In addition, Shell will execute a communication plan and use communication and call centers located in coastal villages of the Beaufort Sea (see above) to communicate activities and routine vessel traffic with subsistence users throughout the period in which all surveys will be conducted. As a result of the distance and spatial location of site clearance and shallow hazard surveys from traditional bowhead whale subsistence harvest, any effects on the bowhead whale, as a subsistence resource, will be negligible.

Activities associated with Shell's planned ice gouge surveys in Camden Bay would have no or negligible effect on the availability of bowhead whales for the Kaktovik, Nuiqsut, and Barrow subsistence whaling harvests. Mitigation of the impact from ice gouge surveys includes the possible use of either an AUV, or conventional survey method without airguns, and timing and location of surveys. The AUV will be launched from the stern of a vessel and will survey the seafloor close to the vessel. The vessel will transit an area, with the AUV surveying the area behind the vessel. Marine mammal observers onboard the vessel ensures the AUV has a minimal impact on the environment. The AUV also has a Collision Avoidance System and operates without a towline that reduces potential impact to marine mammals. Using bathymetric sonar or multi-beam echo sounder the AUV can record the gouges on the seafloor surface caused by ice keels. The Sub-bottom profiler can record layers beneath the surface to about 20 ft (6.1 m). The AUV is more maneuverable and able to complete surveys quicker than a conventional survey. This reduces the duration that vessels producing sound must operate. Also, the ice gouge surveys will be timed to avoid locations east of Mary Sachs Entrance in Camden Bay during the bowhead subsistence harvest of Kaktovik. The ice gouge survey locations through Mary Sachs Entrance and out into Camden Bay are more than 40 mi (64 km) east of Cross Island, and given this distance plus the low-level sound source of the ice gouge surveys, this will mitigate impact to the Nuiqsut bowhead whale subsistence harvest. Timing of activities will be coordinated via the nearest communication and call centers operating in the Beaufort Sea, presumably in Kaktovik and Deadhorse. As a result of the timing, location, and lack of an airgun source for the ice gouge surveys, any effects on the bowhead whale, as a subsistence resource, will be negligible.

Ice gouge survey activities in the Chukchi Sea will be scheduled to avoid impact to bowhead whale subsistence harvests that could be conducted in the Chukchi Sea communities of Wainwright or Point Hope. Scheduling will be coordinated via the nearest communication and call center operating in the Chukchi Sea communities.

(2) Beluga Whales

Beluga are not a prevailing subsistence resource in the communities of Kaktovik, Nuiqsut, or Barrow. Thus, given the location and timing of site clearance and shallow hazards and ice gouge surveys in the Beaufort Sea, any such behavioral response by beluga to these activities would have a no significant effect on them as a subsistence resource.

Belugas are a prevailing subsistence resource in the Chukchi Sea community of Pt. Lay. The Point Lay beluga hunt is concentrated in the first two weeks of July (but sometimes continues into August), when belugas are herded by hunters with boats into Kasegaluk Lagoon and harvested in shallow waters. Ice gouge survey activities in the Chukchi Sea will be scheduled to avoid the traditional subsistence beluga hunt in the community of Pt. Lay. Timing of any ice gouge survey activities will be coordinated via the nearest communication and call centers operating in the Chukchi Sea, presumably in Wainwright and Barrow.

(3) Seals

Seals are an important subsistence resource and ringed seals make up the bulk of the seal harvest of both Kaktovik and Nuiqsut. Seals can be hunted year-round, but are taken in highest numbers in the summer months in the Beaufort Sea (MMS 2008). Seal-hunting trips can take Nuiqsut hunters several miles offshore; however, the majority of seal hunting takes place closer to shore. The mouth of the Colville River is considered a productive seal hunting area (AES 2009), as well as the edge of the sea ice. Lease blocks where site clearance and shallow hazards surveys will occur are located over 15 mi (24 km) from the mouth of the Colville River, so there is less chance for impact on subsistence hunting for seals. Ice gouge surveys in Mary Sachs Entrance in Camden Bay will be conducted (AES 2009) over 30 miles from the westernmost extent of seal hunting by Kaktovik hunters (AES 2009). The remainder of ice gouge lines will be

much further offshore than where Kaktovik seal hunts typically occur which is inside the barrier islands (AES 2009). It is assumed that effects on subsistence seal harvests would be negligible given the distances between Shell's proposed site clearance and shallow hazards and ice gouge surveys and the subsistence seal hunting areas of Nuiqsut and Kaktovik.

Seals are an important subsistence resource in the Chukchi Sea community of Wainwright. Ringed seals make up the bulk of the seal harvest. Most ringed and bearded seals are harvested in the winter or in the spring (May–July) which is before Shell's ice gouge survey would commence, but some harvest continues into the open water period. Hunting that does occur during the open water season generally occurs within 10 miles of the coastline (AES 2009), while the majority of ice gouge survey activity will be much further offshore. Timing of activities will be coordinated via the nearest communication and call centers operating in the Chukchi Sea, presumably in Wainwright and Barrow. It is assumed that effects on subsistence seal harvests would be negligible given the timing and distances between Shell's proposed ice gouge survey and the subsistence seal hunting area of Wainwright.

All survey activities will be operated in accordance with the procedures of Shell's Marine Mammal Monitoring and Mitigation Plan (4MP) that accompanies this program. This potential impact is mitigated by application of the procedures established in the 4MP and to be detailed in the POC. Adaptive mitigation measures may be employed during times of active scouting, whaling, or other subsistence hunting activities that occur within the traditional subsistence hunting areas of the potentially affected communities.

Shell states that it will continue its adopted spatial and temporal operational strategy that, when combined with its community outreach and engagement program, will provide effective protection to the bowhead migration and subsistence hunt.

Based on the above analysis, measures described in Shell's Draft POC, the proposed mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined preliminarily that there will not be an unmitigable adverse impact on subsistence uses from Shell's 2010 open water marine survey activities in the Beaufort and Chukchi Seas.

Endangered Species Act (ESA)

There are two marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area: the bowhead whale and the humpback whale. NMFS' Permits, Conservation and Education Division has begun consultation with NMFS' Endangered Species Division under section 7 of the ESA on the issuance of an IHA to Shell under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of the IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to Shell's 2010 open water marine surveys in the Beaufort and Chukchi Seas, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 12, 2010.

James H. Lecky,

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

[FR Doc. 2010–11860 Filed 5–17–10; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 ("the PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of multi-purpose lighters.

DATES: Submit written or electronic comments on the collection of information by July 19, 2010.

ADDRESSES: Submit written submissions in the following way:

Written comments should be captioned "Proposed Collection of Information—Multi-Purpose Lighters" and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

FOR FURTHER INFORMATION CONTACT: Linda Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7671, *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CPSC is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, the CPSC invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility; (2) the accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3)

ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Safety Standard for Multi-Purpose Lighters—16 CFR part 1212 (OMB Control Number 3041–0130—Extension).

Description: Section 14(a)(1) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard under the Consumer Product Safety Act ("CPSA") or similar rule, ban, standard, or regulation under any other act enforced by the Commission to issue a certificate stating that the product complies with all applicable rules, bans, standards or regulations.

Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms establish and maintain records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for multi-purpose lighters. These regulations require manufacturers and importers to submit a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and other information before the introduction of each model of lighter into commerce. These regulations also require manufacturers, importers, and private labelers of multi-purpose lighters to establish and maintain records to demonstrate successful completion of all required tests to support the certificates of compliance that they issue. 16 CFR part 1212, subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of multi-purpose lighters to protect consumers from risks of accidental deaths and burn injuries associated with those lighters. More specifically, the Commission uses this information to determine whether lighters comply with the standard by resisting operation by young children. The Commission also uses this information to obtain corrective actions if multi-purpose lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the certification regulations for multi-purpose lighters under control number 3041–0130. The Commission proposes to request an extension of approval for this collection of information requirements.

We estimate the burden of this collection of information as follows. The cost of the rule's testing, reporting, recordkeeping, and other certification-related provisions is comprised of time spent by testing organizations on behalf of manufacturers and importers, and time spent by firms to prepare, maintain, and submit records to CPSC. There are currently an estimated 59 firms that import, distribute and/or sell multi-purpose lighters in the United States, which is a subset of the approximately 145 firms total that may import, distribute and/or sell these lighters in the future. With a few exceptions, most manufacturers and importers have more than one model, currently ranging from 1 to 130 models for each firm. Based on past experience, an estimate of two models per firm is a reasonable number to use for calculating burden. Each manufacturer would spend approximately 50 hours per model. Therefore, the total annual amount of time that will be required for complying with the testing, recordkeeping, and reporting requirements of the rule is approximately 5,900 hours (59 firms × 2 models × 50 hours = 5,900 total hours requested). The annualized cost to respondents for the hour burden for collection of information is $335,887 based on a total of 5,900 hours at $56.93/hour (based on total compensation of all management, professional, and related occupations in goods-producing industries in the United States, September 2009, Bureau of Labor Statistics).

The annual cost of the rule to the Federal government is comprised chiefly of the Commission's resources for compliance and enforcement activities. An estimated 2 full-time-equivalent ("FTE") staff years of effort are required to administer the rule annually. The Commission's cost for these staff activities is approximately $170,000 per FTE. Thus, the annual cost of enforcing the rule to the Federal government is estimated to be about $340,000. This cost estimate includes the agency's enforcement and field staff costs.

Dated: May 12, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–11741 Filed 5–17–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for Export of Noncomplying Goods

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 ("the PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of approval of a collection of information from manufacturers and importers of mattresses and mattress pads.

DATES: Submit written or electronic comments on the collection of information by July 19, 2010.

ADDRESSES: Submit written submissions in the following way:

Written comments should be captioned "Proposed Collection of Information—Procedures for Export of Noncomplying Goods" and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

FOR FURTHER INFORMATION CONTACT: Linda Glatz, Division of Policy and Planning, Office of Information, Technology, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, 301–504–7671, *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CPSC is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, the CPSC invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility; (2) the accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Export of Noncomplying, Misbranded, or Banned Products—16 CFR part 1019 (OMB Control Number 3041–0003—Extension).

Description: The Commission requests comments on a proposed three year extension of approval of information collection requirements in regulations codified at 16 CFR part 1019, which establish procedures for export of noncomplying, misbranded, or banned products. These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act, as amended by the Consumer Product Safety Improvement Act ("CPSIA"). Persons and firms are required to notify the Commission before exporting any product that fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required to transmit the information relating to the proposed exportation to the government of the country of intended destination. In addition, for any consumer product that is not in conformity with an applicable consumer product safety rule, exports from the United States may be prohibited unless the importing country has notified the Commission that such country accepts the importation of such consumer product. 15 U.S.C. 2067.

We estimate the burden of this collection of information as follows. Based on a review of the number of export requests received by the CPSC during the last three years, the CPSC staff estimates that approximately 44 notifications will be received from an estimated 20 firms per year. The staff further estimates that the average time for each response is one hour, for a total of 44 hours of annual burden. The annualized cost to respondents would be approximately $2,505. (44 hours at $56.93/hour based on total compensation of all management, professional, and related occupations in goods-producing industries in the United States, September 2009, Bureau of Labor Statistics.)

The estimated annual cost of the information collection requirements to the Federal government is approximately $14,000. The staff estimates that it takes about three hours to process an export notification and enter the information in the appropriate database. The receipt and processing of 44 notifications would require approximately 132 staff hours or approximately 1 staff month per year.

Dated: May 12, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–11753 Filed 5–17–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 ("the PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of approval of a collection of information from manufacturers and importers of mattresses and mattress pads.

DATES: Submit written or electronic comments on the collection of information by July 19, 2010.

ADDRESSES: Submit written submissions in the following way:

Written comments should be captioned "Proposed Collection of Information—Mattresses and Mattress Pads" and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

FOR FURTHER INFORMATION CONTACT: Linda Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. 301–504–7671. *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CPSC is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, the CPSC invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper

performance of CPSC's functions, including whether the information will have practical utility; (2) the accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Standard for the Flammability of Mattresses and Mattress Pads—16 CFR part 1632 (OMB Control Number 3041–0014—Extension).

Description: The Standard for the Flammability of Mattresses and Mattress Pads was promulgated under section 4 of the Flammable Fabrics Act ("FFA"), 15 U.S.C. 1193, to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads and to obtain acceptable results from such testing. Manufacturers and importers are required to maintain the records and test results specified under the standard. OMB previously approved the collection of information under control number 3041–0014. The Commission now proposes to request an extension of approval for the collection of information of the testing and recordkeeping requirements under 16 CFR part 1632.

In addition, the Standard for the Flammability (Open Flame) of Mattress Sets was promulgated under section 4 of the FFA, 16 CFR part 1633, to reduce deaths and injuries related to mattress fires, particularly those ignited by open flame sources such as lighters, candles and matches. The standard established new performance requirements for mattresses and mattress sets that will generate a smaller size fire from open flame source ignitions. Part 1633 also contains recordkeeping requirements to document compliance with the standard. OBM approved that collection of information under Control Number 3041–0133, with an expiration date of March 31, 2013. The testing and recordkeeping requirements under 16 CFR part 1633 do not replace the testing and recordkeeping requirements under 16 CFR part 1632.

In May 2006, an Interim Enforcement Policy for Mattresses subject to 16 CFR parts 1632 and 1633, effective May 1, 2006, was issued that reduced prototype surface testing and recordkeeping requirements from six mattress surfaces to two mattress surfaces for each new prototype created after March 15, 2006. Manufacturers that avail themselves of the reduced testing program will have to maintain records on the cigarette test performed but they will be testing only two surfaces rather than the required six surfaces. The policy is available at *http://www.cpsc.gov/BUSINFO/Interimmattress.pdf.* Mattress prototypes created before March 15, 2006, are subject to the full requirements of 16 CFR part 1632. In addition, mattress pads are not subject to this policy and must continue to adhere to all the requirements set forth in 16 CFR part 1632.

We estimate the burden of this collection of information as follows. The CPSC staff estimates that there are 671 respondents (571 establishments producing conventional mattresses and 100 establishments producing non-conventional mattresses in the United States, a total of 671). It is estimated that each respondent will spend 26 hours for testing and record keeping annually for a total of 17,446 hours (671 firms × 26 hours = 17,446 total hours requested). The annualized cost to respondents would be $993,201 based on 17,446 hours times $56.93/hour (based on total compensation of all management, professional, and related occupations in goods-producing industries in the United States, September 2009, Bureau of Labor Statistics).

The estimated annual cost of the information collection requirements to the Federal government is approximately $142,000. This sum includes 10 staff months and travel costs expended for examination of the information in records required to be maintained by the standard and enforcement rule.

Dated: May 12, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–11754 Filed 5–17–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Standard for Bicycle Helmets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 ("the PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of approval of a collection of information from manufacturers and importers of bicycle helmets.

DATES: Submit written or electronic comments on the collection of information by July 19, 2010.

ADDRESSES: Submit written submissions in the following way:

Written comments should be captioned "Proposed Collection of Information—Bicycle Helmets" and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

FOR FURTHER INFORMATION CONTACT: Linda Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7671, *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C.

3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CPSC is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, the CPSC invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility; (2) the accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Safety Standard for Bicycle Helmets—16 CFR part 1203 (OMB Control Number 3041–0127—Extension).

Description: In 1994, Congress passed the "Child Safety Protection Act," which, among other things, included the "Children's Bicycle Helmet Safety Act of 1994" Public Law 103–267, 108 Stat. 726. This law directed the Commission to issue a final standard applicable to bicycle helmets that would replace several existing voluntary standards with a single uniform standard that would include provisions to protect against the risk of helmets coming off the heads of bicycle riders, address the risk of injury to children, and cover other issues as appropriate. The Commission issued the final bicycle helmet standard in 1998. It is codified at 16 CFR part 1203. The standard requires all bicycle helmets manufactured after March 10, 1999, to meet impact-attenuation and other requirements. The standard also contains testing and recordkeeping requirements to ensure that bicycle helmets meet the standard's requirements. Certification regulations implementing the standard require manufacturers, importers, and private labelers of bicycle helmets subject to the standard to: (1) Perform tests to demonstrate that those products meet the requirements of the standard; (2) maintain records of those tests; and (3) affix durable labels to the helmets stating that the helmet complies with the applicable standard. The certification regulations are codified at 16 CFR part 1203, subpart B. On September 2, 2009, the Commission issued a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing bicycle helmets that are considered children's products under the Consumer Product Safety Act (74 FR 45428).

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of bicycle helmets subject to the standard to help protect the public from risks of injury or death associated with head injury associated with bicycle riding. More specifically, this information helps the Commission determine whether bicycle helmets subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if bicycle helmets fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the certification regulations under control number 3041–0127. The Commission now proposes to request an extension of approval for the collection of information in the certification regulations.

We estimate the burden of this collection of information as follows. Approximately 30 firms manufacture or import bicycle helmets subject to the standard. There are an estimated 200 different models of bicycle helmets currently marketed in the United States. The Commission staff estimates that the time required to comply with the collection of information requirements is approximately 100 to 150 hours per model per year. The total amount of time estimated for compliance with these requirements for testing, including third-party testing for children's bicycle helmets, certification, and recordkeeping will be 20,000 to 30,000 hours per year (200 models × 100 to 150 hours/model = 20,000 to 30,000 hours). The annualized cost to respondents for the hour burden for collection of information is $1,138,600 to $1,707,000 based on 20,000 to 30,000 hours times $56.93/hour (based on total compensation of all civilian workers in managerial and professional positions in the United States, September 2009, Bureau of Labor Statistics).

The estimated expenditure to the Federal government is approximately $83,000 which includes 10 staff months and travel costs expended for examination of the information in records required to be maintained by the standard and implementing regulations.

Dated: May 12, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–11752 Filed 5–17–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meeting of the Department of Defense Wage Committee will be held on Tuesday, May 18, 2010, at 10 a.m. at 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia, 22209.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: May 13, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–11893 Filed 5–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of Notice of Intent To Prepare an Environmental Impact Statement for Northwest Aggregates' Previously Authorized Replacement of an Existing Barge Loading Facility in East Passage of Puget Sound on the Southeast Shoreline of Maury Island, King County, WA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Cancelation of Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Seattle District will issue a revised Notice of Intent at a later date. The notice that was previously published in the **Federal Register** (75 FR 25217) on May 7, 2010 is cancelled.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–11816 Filed 5–17–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Two-Stage Evaporative Cooling Method for Protective Clothing Ensembles

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/319,070 entitled "Two-Stage Evaporative Cooling Method for Protective Clothing Ensembles," filed March 30, 2010. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates generally to a two-stage evaporative cooling method for use in protective clothing ensembles.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–11818 Filed 5–17–10; 8:45 am]

BILLING CODE 3710–08–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 June 17, 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 e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.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: May 12, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: 2011–12 National Postsecondary Student Aid Study (NPSAS:12) Field Test.

Frequency: Annually.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 616.

Burden Hours: 576.

Abstract: NPSAS, a nationally representative study of how students and their families finance education beyond high school, was first implemented by National Center for Education Statistics (NCES) in 1987 and has been fielded every 3 to 4 years since. This submission is for the eighth cycle in the series, NPSAS:12, and requests reinstatement of the previously obtained clearance for NPSAS:08 (OMB No. 1850–0666 v.4). NPSAS: 12 will also serve as the base year study for the Beginning Postsecondary Students Longitudinal Study (BPS) of first-time postsecondary students that will focus on issues of persistence, degree attainment, and employment outcomes. Following the field test study in 2010, NCES will submit an OMB clearance package for the full scale. The NPSAS: 12 field test sample will include about 225 institutions (full-scale sample about 1,670) and about 4,500 students (120,000 full-scale). Institution contacting for the field test will begin in September 2010 and list collection will be conducted January through May 2011 (full-scale institution contacting will begin in September 2011 and student lists will be collected January through June 2012). A separate package to request clearance for student data collection (interviews and institution record data) will be submitted in September 2010. The main changes since the last NPSAS collection in 2008 consist of a new cohort of the Beginning Postsecondary Students Longitudinal Study (BPS) which will conduct follow-up studies in 2014 and 2017, and revised strata for institution sampling to reflect the recent growth in enrollment in for-profit 4-year institutions.

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 4238. 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. 2010–11826 Filed 5–17–10; 8:45 am]

BILLING CODE 4000–01–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 June 17, 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 e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.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: May 13, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application Forms and Instructions for the Fulbright-Hays Training Grants: Doctoral Dissertation Research Abroad Program (CFDA Number 84.022A) and Faculty Research Abroad (CFDA Number 84.019A).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 850.

Burden Hours: 20,750.

Abstract: The Fulbright-Hays Doctoral Dissertation Research Abroad and Faculty Research Abroad Programs are designed to contribute to the development and improvement of modern foreign language and area studies in the United States by providing opportunities for scholars to conduct research abroad. These applications require OMB clearance in order to continue the annual competition and funding of awards. The Fulbright-Hays programs have been in existence since 1961.

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 4295. 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. 2010–11863 Filed 5–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Employer Practices Related to Employment Outcomes Among Individuals With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–3.

Dates:

Applications Available: May 18, 2010.

Date of Pre-Application Meeting: May 27, 2010.

Deadline for Transmittal of Applications: July 19, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The *Employer Practices Related to Employment Outcomes Among Individuals with Disabilities* priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register.**

For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Rehabilitation Research and Training Centers (RRTC) Requirements and *Employer Practices Related to Employment Outcomes Among Individuals with Disabilities.*

Note: The full text of each of these priorities is included in the notice of final priorities in the **Federal Register** and in the applicable application package.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $800,000.

Maximum Award: We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Note: The maximum amount includes direct and indirect costs. A grantee may not collect more than 15 percent of the total grant award as indirect cost charges (34 CFR 350.23).

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133B–3.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: May 18, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on May 27, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza (PCP), Room 5140, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.*

Deadline for Transmittal of Applications: July 19, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit

your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) You must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Research and Training Centers (RRTCs)—CFDA Number 84.133B–3 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date becausee-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–3), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–3), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (*e.g.,* new or improved tools, methods,

discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.

• The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.

• The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

For Further Information Contact: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) 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.*

Dated: May 13, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11876 Filed 5–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR); Disability and Rehabilitation Research Projects and Centers Program; Rehabilitation Research and Training Centers (RRTCs); Employer Practices Related to Employment Outcomes Among Individuals With Disabilities

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–3.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice announces a priority for an RRTC on Employer Practices Related to Employment Outcomes Among Individuals with Disabilities. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective June 17, 2010.

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5140, PCP, Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

RRTC Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (73 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

• Carry out coordinated advanced programs of rehabilitation research;

• Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;

• Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;

• Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and

• Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must also demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on January 14, 2010 (75 FR 2119). The NPP included a background statement that described our rationale for the priority proposed in that notice.

There are differences between the NPP and this notice of final priority (NFP) as discussed in the following section.

Public Comment: In response to our invitation in the NPP, three parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the NPP follows.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes:

Comment: One commenter suggested that employment research should not focus solely on employer practices but should also examine barriers to employment at the system and consumer levels.

Discussion: NIDRR acknowledges the importance of conducting research on the system- and consumer-level barriers to the employment of individuals with disabilities. However, in establishing the scope of this priority, NIDRR considered the broad employment-related goals of the Office of Special Education and Rehabilitative Services and the state of the science on employer practices related to individuals with disabilities (summarized in the Notice of Proposed Priority published in the **Federal Register** on January 14, 2010 (75 FR 2119–2122)). Based on these inputs, NIDRR concluded that this priority should be directed to research on specific employer practices towards hiring, retaining, and advancing individuals with disabilities and the relationship between different practices and employment outcomes for individuals with disabilities.

Changes: None.

Comment: One commenter pointed out that research alone is not sufficient to improve employer practices that affect individuals with disabilities. The commenter stated that research in this area must be translated and implemented in the field of practice, and that, for the employer practices to be effective, they must benefit both employers and employees.

Discussion: NIDRR acknowledges the importance of translating research results into practice. Paragraph (c) of the priority requires the grantee to conduct training and dissemination activities to facilitate the utilization of research findings in employment settings. We believe that these requirements will help ensure that research results are disseminated and available to employers, vocational rehabilitation (VR) practitioners, and policy makers. Grantees also must collaborate with employers in developing, implementing, and evaluating intervention strategies. We believe that this requirement will help ensure that employers can provide feedback to the grantee on how practices can be implemented to benefit them as well as employees.

Changes: None.

Comment: One commenter suggested that the unit of analysis focus on changes in policies at the State level rather than the employer or individual level. The commenter noted that this level of analysis would facilitate the identification of the effects of system-level variables on employment outcomes.

Discussion: Nothing in the priority precludes the examination of State-level data. However, the focus of the priority, as reflected in paragraphs (a) and (b), is on employer practices and the relationship between those practices and employment outcomes. Therefore, an applicant can propose to analyze State-level data provided that it also meets the requirements reflected in paragraphs (a) and (b) of the priority.

Changes: None.

Comment: One commenter suggested that applicants study factors other than employer practices that may affect the employment of individuals with disabilities.

Discussion: Paragraph (a) of the proposed priority requires that the RRTC conduct research to determine the extent to which employer practices are associated with factors that include but are not limited to employer size, geographic regions, sector of industry or the economy (e.g., private sector, public sector, goods-producing, service-producing), employer preconceptions, and experience working with VR agencies. However, in the proposed priority, we inadvertently neglected to specify how research using these factors should be conducted and will change paragraph (a) in the priority to make this clear.

Changes: NIDRR has revised the wording of the last sentence in paragraph (a) of the priority to clarify that the RRTC must conduct research to determine the extent to which the specific employer practices examined by the RRTC are associated with such factors as employer size, geographic regions, sector of industry or the economy (e.g., private sector, public sector, goods-producing, service-producing), employer preconceptions, and experience working with VR agencies.

Final Priority:

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Employer Practices Related to Employment Outcomes Among Individuals with Disabilities. This RRTC must conduct research that contributes to our knowledge about the differences that exist in employer practices towards hiring individuals with disabilities and the relationship between different practices and employment outcomes for individuals with disabilities. This new knowledge will contribute to more targeted interventions to improve employer practices related to the employment of individuals with disabilities. Under this priority, the RRTC must contribute to the following outcomes:

(a) New knowledge of specific employer practices most strongly associated with desired employment outcomes for individuals with disabilities and the prevalence of these practices. The RRTC must contribute to this outcome by identifying and categorizing employer practices related to the hiring, retention, and advancement of individuals with disabilities and conducting research on the extent to which employers engage in specific practices that have been found in relevant research to promote positive employment outcomes for individuals with disabilities. The RRTC must also conduct research to determine the extent to which these employer practices are associated with factors that include, but are not limited to: Employer size, geographic regions, sector of industry or the economy (e.g., private sector, public sector, goods-producing, service producing), employer preconceptions, and

experience working with vocational rehabilitation agencies.

(b) Increased knowledge about how these practices relate to employer success in hiring, retention, and promotion of individuals with disabilities. Applicants must propose strategies to collect information about these practices and outcomes directly from employers, taking into account that it can be difficult to collect information about employer practices and outcomes. In addition, applicants are encouraged to use existing databases such as those maintained by the Equal Employment Opportunity Commission, the Small Business Administration, the Office of Federal Contract Compliance Programs, and disability insurance providers.

(c) Increased incorporation of findings into practice and policy. The RRTC must contribute to this outcome by:

(1) Collaborating with employer groups to develop, evaluate, or implement strategies to increase utilization of positive practices identified by the RRTC.

(2) Conducting training and dissemination activities to facilitate the utilization of research findings in employment and policy settings.

In addition, this RRTC must collaborate with:

(1) Relevant Rehabilitation Services Administration grantees, such as the 10 regional Technical Assistance and Continuing Education projects.

(2) Relevant grantees and programs in the Department of Labor, including the Office of Disability Employment Policy's National Technical Assistance, Policy, and Research Center for Employers.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

Discussion of costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of this final priority is that the establishment of a new RRTC will advance research to improve the lives of individuals with disabilities. The new RRTC will disseminate and promote the use of new information that will improve the options for individuals with disabilities to obtain, retain, and advance in employment.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) 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.*

Dated: May 13, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11877 Filed 5–17–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA state plan previously submitted by New Mexico.

DATES: This notice is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone (202) 566–3100 or 1 (866) 747–1471 (toll-free).

Subit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual state at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA state plans filed by the fifty States, the District of Columbia and the territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that states, territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the second revision to the state plan for New Mexico.

The amendment to New Mexico's state plan include securing a custom, hardware, firmware, and software maintenance services information technology contractual agreement for all state approved voting machines and other ancillary election equipment. In

accordance with HAVA section 254(a)(12), all the state plans submitted for publication provide information on how the respective state succeeded in carrying out its previous state plan. New Mexico confirms that its amendments to the state plan were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from May 18, 2010, the state is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this state plan and encourages further public comment, in writing, to the State Election Official listed below.

Chief State Election Official

The Honorable Mary Herrera, Secretary of State, New Mexico State Capitol, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87503, Phone: (505) 827–3600 or 1 (800) 477–3632, Fax: (505) 827–8403.

Thank you for your interest in improving the voting process in America.

Dated: May 10, 2010.

Thomas R. Wilkey,

Executive Director, Election Assistance Commission.

BILLING CODE 6820–KF–P

MARY HERRERA
NEW MEXICO
SECRETARY OF
STATE

NEW MEXICO STATE PLAN
FY 09-10

As required by Public Law 107-252
Help America Vote Act 2002, Section 253 (b)

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EXECUTIVE SUMMARY

As New Mexico's Secretary of State, I am responsible for overseeing the entire election process throughout the State of New Mexico. This includes maintaining a computerized database of statewide registered voters, testing, evaluating and certifying voting machines, and approving county-produced precinct boundary maps.

We are blessed to live in a nation where we have the freedom to vote. This precious right has been won and protected by our brave men and women who have fought to defend our liberty.

Indeed, there is no greater privilege of freedom extended to the citizens of New Mexico than the right to vote and to elect the officials who represent them at all levels of government.

As the Chief Election Officer for the state, we work diligently to remove obstacles in an effort to assist and encourage the citizens of New Mexico to vote.

As part of the Help America Vote Act (HAVA) of 2002, we have taken great effort to continue to make the voting process more accessible and user friendly for voters. It has been an honor to be involved in the implementation of projects that further improve the election process. This State Plan is a living document and working plan of action that will continue to evolve. Through its implementation, it will empower New Mexico voters to voice their electoral preference in an environment that ensures the independence and integrity of their vote.

It is my pleasure, and that of the New Mexico Secretary of State's Office, to continue to improve the election process.

This document provides an update of New Mexico's commitment to the empowerment of its voters that synthesizes integrity, accessibility and self-determination.

Sincerely,

Mary Herrera
Secretary of State

NEW MEXICO SECRETARY OF STATE

FY 09/10 STATE PLAN

INTRODUCTION

This New Mexico State Election Plan for FY 09/10 is proposed in accordance with Public Law 107-252, Help America Vote Act 2002, Section 253 (b), as enacted in October 2002 to assist states in the administration of federal elections. This law implements minimum standards for states and units of local government with the responsibility for the ***administration of federal elections.***

Since elected to a four-year term, on January 01, 2007, Mary Herrera, New Mexico Secretary of State, has continued the process of working with county clerks, presiding judges, precinct officials, election volunteers, federal and state agency representatives, legislators, agencies representing persons with disabilities, veterans, senior citizens, youth organizations, educators, voters, the general public, and various education and news reporting media for informing and improving the election system and polling site accessibility as stipulated under Title I, Section 101, Title II, Section 251, Section 261 & Title III, Sections 302, 303 and 304.

This proposal is in response to the FY 2009/2010 HAVA, Title II, Section 251 grant. The maximum amount of funds being made available is $613,898 with a five percent match ($32,310) from the state for a total of $646,208.

The intent of this initiative is to secure a contract agreement for a one-year period for the provision of hardware, firmware and software maintenance and support services for all of the state's voting machines and other election equipment, including the ADA compliant AutoMARK™ Voter Assist Terminal (ancillary election equipment).

The designation for this initiative is necessary due to the severe budget cuts being experienced in the State of New Mexico. Furthermore, the State of New Mexico is mandated under federal and state election laws to provide coverage for maintenance and support services for all voting machines and other election equipment, including AutoMARKS™ in order to ensure that the voting equipment is calibrated and in proper working condition for federal and statewide elections.

As a result, the New Mexico Secretary of State met with the New Mexico HAVA Task Force on Monday, August 31, 2009 to explain the situation and to obtain the committee's input and approval. The New

Mexico Secretary of State also met with the 33 County Clerks on Monday, October 05, 2009, to consider a contract agreement for the provision of hardware, firmware and software maintenance and support services, which includes all voting machines and other ancillary election equipment. The County Clerks reviewed and approved the plan. On behalf of the 33 County Clerks, the Bernalillo County Clerk agreed to provide the five percent match for the maintenance and support services for the voting machines and other ancillary election equipment. Their involvement is necessary to the initiative since they are the 'chief election officials' in their respective counties and also serve as the custodians for the voting machines and other ancillary election equipment.

Note:

- The committee made up of the 33 County Clerks, as identified above, does not replace the New Mexico HAVA Task Force, the purpose of which is to assist the Secretary of State in developing the State Plan, as discussed below.

- Pursuant to HAVA, Section 255(a), "The chief state election official shall develop the HAVA State Plan under this subtitle through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the State, other local election officials, stakeholders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief state election official." Furthermore, when funding becomes available, the New Mexico Secretary of State shall convene a meeting with the committee to consider recommendations for the State Plan initiatives.

The following are the members of the committee, also known as the New Mexico HAVA Task Force:

- Robert Adams, Bernalillo County Chief Deputy Clerk
- Anthony Alarid, Governor's Commission on Disability
- Anne Arrasmith, Bernalillo County Clerk's Office
- Evelyn Blair, New Mexico Commission for the Blind
- Melanie Carver, Attorney General's Office & Legal Counsel
- Bernadine Chavez, Disability Rights of New Mexico
- Tom Day, Disability Rights of New Mexico
- Georgina Dimas, New Mexico Secretary of State's Office
- Lynn J. Ellins, Doña Ana County Clerk
- Kelli Fulgenzi, New Mexico Secretary of State BOE Administrator
- Mary Herrera, New Mexico Secretary of State
- Mario Jimenez, Doña Ana County Chief Deputy Clerk
- Doris McBride, Private Citizen
- Jim Parker, Governor's Commission on Disabilities
- Elizabeth Peterson , Brain Injury Advisory Council
- Pat Putnam , Developmental Disability Planning Council
- Charlene Rodriguez, Private Citizen
- A.J. Salazar, New Mexico Secretary of State BOE Director
- Art Schreiber, Advocate
- Maggie Toulouse Oliver, Bernalillo County Clerk
- Gregg Trapp, New Mexico Commission for the Blind
- Don Francisco Trujillo II, New Mexico Deputy Secretary of State
- Manny F. Vildasol, New Mexico Secretary of State's Office

BACKGROUND

Since statehood, the Constitution and Statutes of the State of New Mexico require that all election materials be provided in both the English and Spanish languages. Over the past 25 years the State of New Mexico has continued to improve its election process.

Beginning in the mid-1980s, the State of New Mexico began its transition from lever voting machines to direct recording electronic and optical scan voting systems. In the late 1980's, the State of New Mexico installed a statewide automated records system, including an integrated voter registration system. In 1999, the New Mexico State Legislature appropriated funding for the Office of the Secretary of State to begin the process of the installation of a new and more interactive system to incorporate voter registration and voter management features. Subsequently, the new system is now installed in 32 of the state's 33 counties in a continuous effort to meet HAVA requirements. In recognition of the cost of voting systems acquisition, the state established the Voting Machine Revolving Fund, a no-interest funding mechanism for counties to purchase new systems. Gradually, the debt ceiling of the fund has been raised to $6.5 million, but due to the state's budget crisis, the fund was drawn upon by the legislature and only $386,031 remains in the fund.

In 1991, four years prior to the effective date of the National Voter Registration Act, New Mexico began registering voters at Motor Vehicle Division (MVD) site offices. At the present time, voter registration services are being provided to the public via third-party agents, public libraries, universities, colleges and designated state agency-based site offices, whose primary mission is to provide assistance to the general public and services to persons with disabilities.

Since 1993, the legislature has recognized the need to expand opportunities for voting. As such, "early voting" activities were enacted, beginning three weeks prior to an election.

New Mexico adopted the Election Assistance Commission's Voting Systems Standards in 1993 requiring that all systems be certified by the state and independently tested, to meet federal performance and test standards.

In 1998, New Mexico began the use of an electronic canvassing system to ensure accuracy of results and elimination of manual entry and mathematical errors. New Mexico utilizes a triple-audit of election returns. After counties audit the canvass, the state audits each county's returns through a system of duplicate returns forwarded directly from the precinct to the Office of New Mexico Secretary of State. After the Bureau of Elections completes its audit, independent auditors contracted by the state re-examine the returns. Through this triple audit process, the State of New Mexico can ensure that the integrity and accuracy of its canvass process is maintained at the highest level.

In 2006, the state changed to an all paper ballot system. Presently, New Mexico's Election Code is uniformly applied in all 33 counties. The code requires that a uniform ballot be used throughout the entire state. In order to maintain uniformity, the Office of the Secretary of State approves all ballot content and layout for federal and statewide races.

VOTING SYSTEM STANDARDS

Section 301 of the Help America Vote Act sets forth specific standards for voting systems. HAVA requires each voting system to: 1) permit voters prior to casting their ballot to verify the candidates or questions they have voted for or against; 2) allow voters to change or correct their vote in a private and independent manner; 3) inform voters if they have over-voted (voting for more than one candidate for a single office); 4) inform the voter of the opportunity to receive a replacement ballot; 5) produce a paper record with a manual audit capability; 6) be accessible to people with disabilities through the use of at least one ADA compliant voting system located at each polling site; 7) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965 via the ES&S AutoMARK™ voter assist terminal, a breakthrough ballot-marking technology that allows voters with disabilities or special needs to mark a ballot privately and independently. The technology also provides language assistance to voters who are more comfortable speaking a different language or who need help to better understand written instructions; and 8) comply with error rates established under the provisions of HAVA. In addition, states are required to adopt uniform and non-discriminatory standards defining what constitutes a vote and what will be counted as a vote for each voting system.

The paper ballot voting system in the State of New Mexico provides a ballot so voters may verify their ballot before it is cast and counted.

Ballot Correction

HAVA requires that states using paper ballot voting systems to establish a voter education program specific to each voting system notifying voters of the effect of over voting. This notification requirement includes providing voters with instructions on how to correct the ballot.

The State of New Mexico has both statutory language and administrative procedures in place for paper ballot voting systems at the polls. Additional instruction signs are placed at all polling sites. Further, the Secretary of State posts instruction materials for all voting systems on its website and also encourages the County Clerks to post the information on their websites.

Manual Audit Capacity

New Mexico election law mandates that every voting system have a manual audit capacity and the ability to produce a paper record. As a paper-ballot state, this requirement is self-implementing. Other statistical information required is election date, precinct number, polling site, number of voters, votes cast, names of precinct board members and opening and closing of polling sites.

Disability Access

HAVA requires voting systems be accessible to voters with disabilities and citizens in need of special assistance. There must be the same opportunity for access, privacy, participation and independence other voters enjoy.

The State of New Mexico has used HAVA federal funding to purchase one ADA compliant voting system, called the AutoMARK™, with audio assist for each polling site throughout the State.

One of the highest priority items of this purchase included training counties in programming and maintenance. A voter education program was developed to ensure that voters with disabilities are fully educated in the use of the new ADA compliant voting systems. Precinct official training programs were developed and implemented in order to provide election workers with the necessary skills to operate the system for elections.

New Mexico has long recognized the importance of providing accessible polling sites as part of its voter outreach efforts. Since 1979, the State of New Mexico has mandated that all polling sites be accessible to voters with disabilities or citizens with special needs. In order to maintain this requirement, a physical inspection of each polling site is conducted by County Clerks prior to each election. To further ensure compliance and uniformity, the Office of the New Mexico Secretary of State has provided instructional materials to County Clerks to enable them to evaluate polling site accessibility. In accordance with this program, the State continues to collaborate with the New Mexico HAVA Task Force in updating all instructional materials and encouraging those with disabilities to exercise their right to vote in a private and secure manner. A variety of methods, including contracts with independent consultants and local disability advocacy groups are utilized to ensure each polling site in New Mexico has been surveyed for disability access. A continuous effort is extended to bring all polling sites into ADA compliance.

Alternative Language Accessibility

HAVA requires voting systems to provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965.

Under New Mexico's Constitution and Statutes, all election materials are required to be printed in the Spanish and English languages. Where a minority language is historically unwritten, all proclamations, registrations, voting notices, instructions, assistance and other information related to the electoral process are provided orally in the respective minority language. This protocol also applies to the media when practicable, public meetings and on Election Day at the polling sites.

In 1988, the Office of the Secretary of State created its Native American Education Information Program. Two Native American Bureau of Election employees provide comprehensive and detailed election information to all tribes in the state. State election proclamations and proposed statewide ballot questions are translated into nine native languages by the Office of the Secretary of State. Once translated, they are radio-broadcasted in counties with pueblo and tribal citizens in order to inform them of the intent and effect of the proposed ballot questions. Counties with large Native American populations have local inter-tribal programs and Native American staff that assist the surrounding populations and provide registration and election information programs. The Office of the Secretary of State facilitates training and assistance to local Native American coordinators. Counties with Native American populations provide translators at polling sites on Election Day. In addition, the AutoMARK™ Voter Assist Terminal also provides audio assistance to the visually impaired and alternative language accessibility to voters.

Error Rates & ABD Definition of Vote

HAVA requires that the error rate of all voting systems used to conduct federal elections shall comply with the current error rate standards by the Election Assistance Commission (EAC). These error rates are attributed to the voting system and not due to the actions of individual voters.

All voting systems certified in the State of New Mexico are required to meet the federal standards under state statutes. Any future systems acquired in compliance with HAVA requirements shall also meet the established federal error rates.

HAVA requires that states adopt "uniform and non-discriminatory standards" for what constitutes a vote. A uniform, statewide definition of what constitutes a vote on a paper ballot was established in accordance with 1-9-4.2B NMSA 1978. This statute has been upheld by the New Mexico Supreme Court as complying with the HAVA requirements.

Provisional Voting and Voting Information

Provisional Voting

HAVA requires that states provide a provisional ballot, formally known as "fail safe voting" under the National Voter Registration Act, to any individual who declares that he or she is a registered voter of the county and is eligible to vote in a federal election. The Act requires the State of New Mexico to provide a "free-access" system so an individual who casts a provisional ballot may determine whether or not the vote was counted.

New Mexico provides a provisional voting program, with all election materials necessary to allow voters to take full advantage of provisional ballots. In order for voters to determine the disposition of their provisional ballot, the Office of the Secretary of State provides a toll-free phone line. County election

officials provide a report on the disposition of each provisional ballot to the New Mexico Secretary of State's Bureau of Elections. An administrative rule has been implemented to establish uniform procedures for provisional voting.

Voting Information

HAVA requires that specific voting information be posted at every polling site on Election Day that includes: 1) a sample ballot; 2) instructions on how to vote and cast a provisional ballot; 3) instructions for mail-in registrants; 4) instructions for first-time voters; and 5) general information on voting rights and voter fraud. New Mexico currently posts and publishes voter information through a variety of media outlets available at various locations. Election proclamations are published in legal notices for five consecutive days and constitutional amendments are published in legal notices in every county, four times prior to an election. These notices are also posted on the New Mexico Secretary of State's website and broadcast in Native American languages. The Office of the New Mexico Secretary of State publishes a voter guide with a listing of the offices, candidates on the ballot and the content (including pro and con arguments) for each constitutional amendment or general obligation bond. The Office of the New Mexico Secretary of State has maintained a toll-free telephone number, so that voters may receive voting assistance, make inquires about the electoral process, as well as report irregularities at the polling sites.

In addition to the information provided, New Mexico continuously strives to maintain compliance with all voter information requirements of the Help America Vote Act.

Computerized Statewide Voter Registration System

HAVA requires states to establish a "single, uniform, official, centralized, interactive, computerized state voter registration list defined, maintained and administered at the State level."

In 1989, the New Mexico Election Code was amended to include the Automated Voter Records System Act. The Act requires that the Secretary of State establish a statewide computerized voter registration system. The New Mexico Secretary of State's Information Technology staff collaborates with County Clerks to generate monthly reports to address errors, discrepancies and duplicate social security numbers. Due to the State of New Mexico using voter's social security numbers prior to the enactment of the Privacy Act of 1974, the state was grand-fathered in under the new law to allow the use of the entire social security number for voter registration purposes.

In 1999, the New Mexico Secretary of State's Office received legislative funding and began working with a committee of County Clerks and data processors to establish a statewide voter registration system called the "Voter Registration and Election Management System" (VREMS). The committee developed system requirements, interviewed vendors, sought references from other states and worked with the State Purchasing Department to create a request for a proposal process. After a selection was made by the committee, installation in the pilot county began in early 2000. Presently, the statewide computer database system has been installed in 32 of the 33 counties in the State of New Mexico. The installation of the last county is expected to be completed by the end of the federal FY 09/10, in accordance with the 2008-2009 State Plan.

The system shall meet all HAVA standards and is designed to meet the list maintenance requirements of the National Voter Registration Act (NVRA). Presently, it is being centrally administered by the Office of the Secretary of State.

Requirements for Voters Who Register by Mail (Mail-In Voter Registration)

Section 303 of the Help America Vote Act requires first-time voters who register by mail to submit documentation such as a valid photo ID, a copy of a current utility bill, bank statement, government check, paycheck or other government document that verifies the name and address of the voter or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the person. HAVA also requires the mail-in voter registration form to ask separate "yes" or "no" questions regarding citizenship and age. The form must also contain a statement that informs voters that if they respond "no" to either question, they are not to complete the form. The Act requires that the form contain language notifying the first-time registrant by mail of the identification requirements.

The New Mexico Secretary of State has designed and implemented a new voter registration application form (NMVR-1) that is in compliance with Federal and State laws. Additionally, the Third Party Voter Registration Agent Manual includes a step by step process to properly register qualified electors.

Training and Voter Outreach Education

HAVA requires states to provide training programs for local presiding judges, precinct officials and poll workers, including voter education programs.

Training

The New Mexico Secretary of State is required by election law to "obtain and maintain uniformity in the application, operation and interpretation of the Election Code." This has led to conducting statewide election schools that include all 33 County Clerks prior to each statewide election. Classroom and hands-on training is provided to the County Clerks, presiding judges, precinct officials and election staff volunteers, which cover many aspects of election administration, application and ADA compliance focusing on the needs and legal rights of all voters, including voters with disabilities, as they relate to the registration and voting process. In addition, the Office of the Secretary of State must develop, print and distribute all forms and instructions, prescribed accordingly. The New Mexico Secretary of State continues to improve the process of distributing training and educational materials by making them accessible on the agency's website.

In FY 07/08, the Secretary of State provided two comprehensive election school trainings to the 33 County Clerks in the State of New Mexico.

In addition to the scheduled election schools provided prior to an election, training workshops are also made available upon request from the County Clerks. Furthermore, the Secretary of State's Office, Bureau of Elections, regularly attends County Clerk affiliate meetings in order to inform local election officials of any changes to state and federal laws.

The Office of the Secretary of State has expanded training to include a comprehensive training manual for local precinct officials, presiding judges, election judges and other poll workers throughout the state; and implementation of a certification program that recognizes individuals who participate in a New Mexico Secretary of State sponsored election school workshop. One goal of the Secretary of State is to establish statewide and national certification programs that recognize the importance of standardized training being provided to County Clerks, their staff and election workers. This would include county election officials earning credit for classroom training, on-the-job experience and attending seminars and meetings on election administration. The certification would include the testing of election officials and on-site reviews of county election practices and procedures. After completion of sufficient credit hours, a certificate is awarded. Ongoing certification would require continuous training, attendance at seminars and meetings and a regular evaluation of administrative practices.

The New Mexico Secretary of State provides voting machine technician certification training through a company retained by the voting machine vendor. This assures that all 33 County Clerks do not have to rely on vendors for the operation and programming of their voting system. As a part of the state's training requirements, precinct board manuals are updated as funding is made available and video instruction materials are developed for each voting system. Some training aids utilized in the poll-worker training workshops are: 1) role-playing exercises for the poll workers; 2) use of visual aids; 3) self-assessments for poll workers following training sessions; and 4) information on how to deal with shortage of poll workers in certain areas.

In an effort to improve the election process for precinct officials and voters throughout the State, the Office of the Secretary of State is committed to working with federal, state and local government agencies, law makers, protection and advocacy agencies that work and/or represent persons with disabilities, schools, community grassroots organizations, civic groups, law enforcement agencies, the public in general and various news media organizations in order to further improve the election process.

Voter Outreach Education

Easy to use, non-technical voter outreach materials provide information for voters on the requirements for registration, use of voting systems and their rights as a voter. The New Mexico Secretary of State's Voter Guide is published prior to General Elections and includes a listing of offices and candidates on the ballot; a list of ballot questions; and an analysis of ballot questions both in the English and Spanish languages. Similar information is provided to non-written Native American language speakers through radio broadcasts. The New Mexico Secretary of State's Office is working with the Native American communities to develop materials for voter education.

Voter and election information is provided on the New Mexico Secretary of State's website. Depending on funding availability, the Voter Guide may be mailed to every household in the state. Registration instructions and requirements are included on the Voter Registration Certificate (application). Instructions to voters on the operation of voting systems are posted inside the voting booths and absentee ballot instructions are included in the materials sent to voters.

The Office of the New Mexico Secretary of State's website provides a plethora of information, such as, but not limited to:

- General Election Information and Instructions
- Sample Ballots for all 33 Counties
- Native American Election Information
- Statewide Polling Site Locations

- Provisional Ballot Information
- General Information for Military and Overseas Voters
- Federal Identification Requirements for Registration by Mail
- Absentee Ballot Voting
- How to Obtain a Replacement Absentee Ballot
- How to Report Suspected Voter Fraud
- How to File an Administrative Complaint
- Campaign Finance Reporting
- Lobbyist Reports
- Financial Disclosures
- Political Action Committees
- Confidential Address Program
- Government Conduct Act
- Informational Voter Materials for Persons with Disabilities (currently being developed for the website.)

The New Mexico Secretary of State collaborates with state agencies whose primary missions are to provide services to persons with disabilities and those receiving public assistance with the opportunity to register to vote. Additional voter outreach is being undertaken to ensure the election process is accessible and accounts for the voter's needs, including ballot access for those with medical emergencies on Election Day. To promote access for persons who are deaf and/or hard of hearing, the Office of the Secretary of the State and County Clerks throughout the state are utilizing Telecommunication Devices for the Deaf (TDDs), which include separate communication lines. Training to election staff on the use of these devices is provided. Through direct publicity campaigns and assistance provided by community-based disability organizations, the state has undertaken outreach efforts designed to educate persons with disabilities on their right to register and vote, as well as how and where to do so.

Voter outreach programs were also developed and implemented to encourage greater youth participation in the electoral process. Furthermore, as part of a statewide effort to increase voter turnout, poll-site location information is being promoted through television, radio and other written media formats.

County Clerks throughout the state continue to be encouraged to participate in grant opportunities under Sections 101, 251 and 261 of the Help America Vote Act, for the improvement of the administration of elections and for upgrading facilities for improved voter accessibility.

PREVIOUS YEAR'S STATE PLAN

FY 2008/2009 HAVA, SECTION 251 STATE PLAN

The New Mexico Secretary of State acquired federal funds for FY 08/09 in the amount of $705,983 under HAVA with a required 5% match ($37,157) for improving the administration of elections, as stipulated under Part I of Sub-title D of Title II for discretionary improvements in accordance to Title I, Section 101 and Title II, Sections 251, 261 and 291. The State Plan adopted the following changes to the State Plan from the previous year (2007-2008), which are currently in the process of being developed and/or implemented, which include: 1) a collaborative pilot project with the counties of Lea, Taos and Valencia, New Mexico for the testing of an electronic poll book system; 2) facilitation of a statewide training workshop for County Clerks in ADA compliance and voter education, to include other HAVA requirements; 3) voter registration and election information campaigns to the general public through various media forums; 4) statewide community voter registration and voter information campaigns, including provisions for persons with disabilities; and 5) completion of the computerized statewide voter registration file, interactive database of all registered voters, also known as the Voter Registration and Election Management System (VREMS). (Note: Once the computerized voter registration file, interactive database statewide system is installed in San Juan County, New Mexico, then all 33 counties will be linked statewide.)

CHANGES TO STATE PLAN FROM PREVIOUS FISCAL YEAR

FY 09/10 STATE PLAN SUMMARY

Funding Distribution and Controls

The Help America Vote Act requires that states include information on how they plan to establish funds used to make expenditures that meet the various requirements of the Act, information on fund management and information on estimated costs. Therefore, the Office of the New Mexico Secretary of State intends to utilize federal funds to address the requirements placed on the state by the Help America Vote Act, under this HAVA Grant as identified in Part I of Sub-title D, Title II, Section 251 for discretionary improvements for FY 09/10. It is anticipated that the allocated funds to the State of New Mexico in the amount of $613,898 with a required 5% match from the State of New Mexico in the amount of $32,310 (Bernalillo

County = $29,187.21 and Secretary of State's Office = $ 3,122.79) will be used to adopt the following changes to the State Plan from the previous year.

Formula for the 5% Match

The 5% match is for the total program (federal share plus state match share). Therefore the formula for calculating the program is:

(Federal Dollars/.95) - Federal Dollars = State Match

or

$613,898/.95 - $613,898 = 32,310

Planned Project

It is the intent of the New Mexico Secretary of State to utilize the 2009-2010 HAVA, Section 251 funds to: Secure a custom hardware, firmware and software maintenance services information technology contractual agreement for all state approved voting machines and other ancillary election equipment.

PERFORMANCE GOALS AND MEASURES

Performance Goal

The goal for the project is to secure a custom hardware, firmware and software maintenance and support services information technology contractual agreement that will ensure that all state approved voting machines and ancillary election equipment are maintained in accordance with HAVA, and other state election laws and rules for a period of one (1) year from December 21, 2009 through December 20, 2010. Therefore, the New Mexico Secretary of the State shall establish a contract agreement that identifies the scope of services and other contractual stipulations as described in Attachment "A" of this proposal.

Cost: $646,208

Date of Completion: 12/20/2010

Project Criteria for Measuring and Gathering Performance Data

The following criteria will be used for measuring and gathering performance data for project:

1) Scope (measure events affecting cost, implementation, schedule or quality).
2) Schedule (progress toward goals); Resources (measures personnel and financial investment).
3) Quality (measures effectiveness); and Risk (measures impact of certain events on operations).

Note: New Mexico has already enacted performance-based budgeting for all state agencies.

Ongoing Maintenance Plan

HAVA requires states to include their plan comments on how they will conduct the ongoing management of the plan.

The New Mexico Secretary of State is the "Chief State Election Official" responsible for the coordination of all of the state's responsibilities under the Act. This plan will be an essential component in New Mexico's continuing effort to improve the administration of the elections and comply with the provisions of the Help America Vote Act. While this plan is to meet requirements of HAVA, it is a matter of policy that the plan be considered a living, flexible, working document designed to assist New Mexico in the improvement and management of the election processes.

The New Mexico Secretary of State understands and agrees to comply with HAVA requirements related to the ongoing management of the Act and will not make any material change to this plan unless the change:

1) is developed and published in the Federal Register in accordance with Section 255 of the Act; and
2) is subject to public notice and comment in accordance with Section 256 of the Act in the same manner as the State Plan; and
3) takes effect only after the expiration of the 30-day period that begins on the date the change is published in the Federal Register.

Audit and Internal Controls

The New Mexico State Auditor's Office oversees audits of the Office of the New Mexico Secretary of State and related programs. Audits are conducted according to accepted auditing standards for financial audits issued by the Comptroller General of the United States.

Maintenance Effort

The Help America Vote Act requires a State that receives "requirement" payments to maintain the expenditures of the State at a level not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 01, 2010. This portion of the Act is referred to as the "maintenance of effort" clause. Under this state plan, New Mexico will comply fully with the maintenance of effort requirement.

ADMINISTRATIVE COMPLAINT PROCEDURE

HAVA § 402 (a) (1) mandates New Mexico establish and maintain a state-based administrative ***complaint procedure*** to remedy grievances under HAVA Title II, Section 251 (i.e. regarding voting system standards, provisional voting, voting information, computerized statewide voter registration list requirements and requirements for voters who register by mail). HAVA sets forth the specific requirements of this administrative compliant procedure and New Mexico Law [Laws 2003, Ch 356, § 5 ("Ch. 356")] essentially replicates the requirements and is in accordance with the State Rules Act [NMSA 1978 §§14-4-1 though 14-4-11 (1995)].

The purpose and intent of the ***administrative complaint procedure*** is to be informal in nature and to work toward an administrative, not judicial resolution to the problem in a violation of HAVA, Title III.

New Mexico's Election Code has been structured and implemented to prevent or minimize the occurrence of voting concerns. If any voting issues occur, the New Mexico Secretary of State's Bureau of Elections and the 33 County Clerks will attempt to immediately address and remedy the concern. Over the years, election officials have been very successful in addressing issues. The State of New Mexico is in a good position to build upon its current problem-solving process through the implementation of the administrative compliant procedure envisioned by HAVA. The State of New Mexico makes every effort to comply with HAVA's Title III requirements and has amended and enacted to the Election Code to meet the Title III requirements. Consequently, New Mexico anticipates very few allegations of Title III violations that cannot be resolved informally.

The State of New Mexico anticipates that all aspects of its administrative compliant procedure will be open to the public. To meet the specific requirements of both HAVA and Ch. 356, New Mexico has adopted rules implementing an administrative complaint procedure as follows:

A. Any complaint filed under the procedure must be limited to alleging a specific violation of Title III. In educating voters, New Mexico will inform all voters about Title III provisions and procedures for filing a complaint and also ensure that the procedural process is uniform and nondiscriminatory. Both the information provided to voters and the administrative compliant procedure will be available in alternative languages and formats pursuant to HAVA § 402 (a) (2) (A) and the state election code.

B. To maintain consistency and compliance, the 33 County Clerks and the New Mexico Secretary of State will continue to address oral complaints in an attempt to resolve the problem informally and expediently; however, a formal complaint alleging a Title III violation must be submitted in writing to the New Mexico Secretary of State's Bureau of Elections. A complaint form will be available from any County Clerk or the New Mexico Secretary of the State and accessible on-line pursuant to HAVA § 402 (a) (2) (B) and Ch. 356, § 5(B).

C. A formal complaint alleging a Title III violation must be submitted to the New Mexico Secretary of State's Bureau of Elections pursuant to HAVA § 402 (a) (2) (C) and Ch. 356, § 5(C).

D. If the New Mexico Secretary of State receives duplicate or repetitive complaints alleging Title III violations, the New Mexico Secretary of State may consolidate them for assessment, investigation and resolution pursuant to HAVA § 402 (a) (2) (D) and Ch. 356, § 5 (B).

E. If the New Mexico Secretary of State determines that a written complaint alleges an actual Title III violation and the complainant requests a hearing on his or her grievance, the New Mexico Secretary of State will appoint a hearing officer to conduct a hearing on the record. If the complaint is directed at a county election official, the hearing officer may be an employee of the Office of the New Mexico Secretary of State. If the complaint is directed at the New Mexico Secretary of State, the Secretary shall appoint a neutral hearing officer with no working or personal relationship with the Office of the New

Mexico Secretary of State. The record will include: 1) the written complaint; 2) any written response to the complaint; 3) all documentation provided in support of, or in defense of the complaint; and 4) the written or audio record of any formal proceedings conducted with regard to the complaint, which is pursuant to HAVA § 402 (a) (2) (E) and Ch. 356, § 5 (D).

The investigation and resolution process may include the following steps or actions taken by the New Mexico Secretary of State, as deemed appropriate under the circumstances by:

1) Sending an acknowledgement letter to the complainant, and notifying him/her that he or she is entitled to a hearing; and
2) Making an initial assessment of the complaint and determining whether it alleges a bonafide Title III violation; and
3) Seeking a response from the election official against whom a complaint is made; and
4) Providing the complainant with a copy of any response received from the election official against whom a complaint is made and giving the complainant an opportunity to reply; and
5) Engaging in informal resolution with the parties through a meeting, teleconference or other means; or
6) Dismissing the complaint based on its clear failure to allege a Title III violation.

If the New Mexico Secretary of State determines that a Title III violation has occurred, the State shall provide a remedy appropriate to the violation. Any remedy shall be in compliance with the provisions of the New Mexico Election Code. If HAVA or Ch. 356 does not define an "appropriate remedy" for a Title III violation, the State has the flexibility to remedy the problem and ensure that the problem does not reoccur. In no event shall the remedy involve either the payment of money to the complainant or a finding that an election official is subject to civil penalties. An appropriate remedy may include a written finding that Title III has been violated and the plan for rectifying the violation; and an assurance that additional training will be provided to the election official to ensure compliance with HAVA and the New Mexico Election Code that demonstrates a commitment to better inform voters of their rights. The Office of the New Mexico Secretary of State will also provide a notice in the website and, if necessary and appropriate, distribute a news release that publicizes the results of its assessment and investigation of the complaint pursuant to HAVA § 402 (a) (2) (F) and Ch. 356, § 5(E).

F. If the New Mexico Secretary of State determines that Title III has not been violated, the State shall dismiss the complaint. A notice shall be posted on the website and a news release will be distributed as appropriate. The New Mexico Secretary of State shall publicize the result of its assessment and investigation of the complaint that results in a finding that no Title III violation has occurred pursuant to HAVA § 408 (a) (2) (G) and Ch. 356, § 5(E).

G. The New Mexico Secretary of State shall make a final determination regarding a written complaint within 90 days after it has been filed with the Office of the New Mexico Secretary of State, unless the complainant consents to extending the deadline. This final determination shall be in writing and provided to the complainant and the election official against whom the complaint was made. An effort will be made to ensure the 90-day timeline is met. If additional time is needed, then the state must request an extension of time from the complainant. If the complainant refuses to consent to an extension, either the state must make its final determination or the complaint will automatically proceed to alternative dispute resolution pursuant to HAVA § 402 (a) (2) (H) and Ch. 356, § 5(F).

H. If the New Mexico Secretary of State fails to make a final determination within the 90-day timeline or as extended by consent of the complainant, the complaint shall be resolved pursuant to the procedures set forth in the New Mexico Governmental Dispute Resolution Act pursuant to NMSA 1978 §§ 12-8A-1 though 12-8A-5 (2000). This Act provides that the parties shall develop an agreement, which will govern the alternative dispute resolution process. All the records and materials from the hearing shall be made available for use in the alternative dispute resolution procedure. The New Mexico Secretary of State must adopt the agreement reached by the parties to the alternative dispute resolution procedure within 60 days after the complaint is referred for resolution under the New Mexico Governmental Dispute Resolution Act pursuant to HAVA § 402 (a) (2) (I) and Ch. 356, § 5(F).

HAVA gives the state the discretion to choose what it deems to be the most appropriate method of complying with the elements of its HAVA State Plan pursuant to HAVA § 253 (c). Generally, the right to judicial review is specifically provided by statute. Neither HAVA nor Ch. 356 provides a statutory right to judicial review of a determination made by the state pursuant to the administrative complaint procedure. The ***New Mexico Administrative Procedure Act*** only "applies to agencies made subject to coverage by law" pursuant to NMSA 1978, § 12-8-23 (1969) and Ch. 356. (Note: The law does not make the New Mexico Secretary of State subject to this Act.) The HAVA administrative complaint procedure need not comply with the ***Administrative Procedures*** *Act* requirements. New Mexico's administrative complaint procedure will be based upon existing laws and procedures and will provide an informal and flexible approach to resolving Title III violations. This procedure does not include judicial review provisions.

ATTACHMENT "A"

State of New Mexico

New Mexico Secretary of State

Information Technology
Agreement for Custom Hardware, Firmware and Software Maintenance Services
Contract No.: _____

THIS Information Technology Agreement is made by and between the **New Mexico Secretary of State's Office** hereinafter referred to as the "Procuring Agency" and **[Insert Vendor's Name]** hereinafter referred to as the "Contractor" and collectively referred to as the "Parties."

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq*; and Procurement Code Regulations, NMAC 1.4.1 *et.seq*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the ONE SOURCE and the Contractor's response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

A. "Acceptance" shall mean the approval, for the purpose of payment, of Deliverables by an executive level representative ("Executive Level Representative") of the Procuring Agency.

B. "Application Deployment Package" shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes and enhancements produced by the Contractor.

C. "Business Days" shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.

D. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work.

E. "Chief Information Officer ("CIO")" shall mean the Secretary/CIO of the Department of Information Technology for the State of New Mexico or designated representative.

F. "Contract Manager" shall mean a qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be **Kathleen Branchal** or designated representative.

G. "Default/Breach" shall mean a violation of a contract by either failing to perform one's own contractual obligations or by interfering with another party's performance of its obligations.

H. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.

I. "Designated Representative" shall mean an identified Procuring Agency employee or employees who are authorized to contact the Contractor to request software maintenance and/or support Services.

J. "DoIT" shall mean the Department of Information Technology.

K. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration/Contracts Review Bureau.

L. "Escrow" shall mean a legal document (such as the software source code) delivered by the contractor into the hands of a third party, to be held by that party until the performance of a condition is accepted; in the event contractor fails to perform, the grantee agency receives the legal document, in this case, source code.

M. "Enhancement" means any modification or addition that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an Error Correction. An Enhancement may be identified as minor or major. For the purpose of this Software Maintenance Template, only minor/small enhancements shall be included.

N. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives.

O. "Know How" shall mean all technical information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

P. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

Q. "Minor Enhancement" or "small enhancement", means an enhancement or improvement to the base program or system from the time of production, the collective cost of which is under $100,000.00, non-critical or low risk, or is identified by the Secretary of the Department of Information Technology as a minor enhancement.

R. "Payment Invoice" shall mean a detailed, certified and written request for payment of services from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.

S. "Project" shall mean a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project approval is given by the Executive Level Representative and verified by the agency CIO to the DoIT. If applicable, under the terms of this Agreement the Project is Political Finance Reporting System and Uniform Commercial Code.

T. "Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.

U. "State Purchasing Agent (SPA)" shall mean the State Purchasing Agent for the State of New Mexico or designated representative.

V. "State Purchasing Division (SPD)" shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.

W. "Software Maintenance" shall mean the set of activities which result in changes to the originally accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and enhancements to the baseline system.

X. "Source Code" shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.

Y. "Subscription Services" means refers to the annual fee for license renewal and maintenance of operational applications or maintenance support and technical support services exclusive of enhancements. Such subscription services are required to be audited on a periodic basis by the procuring agency to determine if the services are being provided by the contractor as required by the procuring agency.

ARTICLE 2 – SCOPE OF WORK

A. Scope of Work. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

B. Performance Measures. Contractor shall substantially perform the Performance Measures set forth in Exhibit A and as described below.

1. Contractor shall maintain a log of requests in an agency approved tracking system with a unique number assigned to each Procuring Agency request. The unique number shall be provided by the contractor to Procuring Agency for reference and communication. The Procuring Agency will assign one of four levels of priority to each request:

Priority 1 is the most severe program error and represents a situation where mission critical features and functions of the PFRS and UCC's are unavailable and no practical alternate mode of operation is available. Priority 1 problems will be corrected or a solution will be provided by Contractor technical staff for corrective action within two (2) hours.

Priority 2 indicates a problem in which certain features and functionality are not available and no practical alternate mode of operation is available. Priority 2 problems will be corrected or a plan will be provided by the Contractor for corrective action within one (1) business day.

Priority 3 is the normal "next-in-line" problem priority assignment. At this level, requests are worked on in the order in which they are received. Priority 3 problems will be corrected or a plan will be provided for corrective action within ten (10) business days.

Priority 4 is the Release assignment. At this level, requests are worked on as deemed appropriate by Procuring Agency. Priority 4 issues will be incorporated into specific Application Releases, which will be scheduled for delivery at the discretion of the Procuring Agency after time and cost estimates are provided by the Contractor and approved by the Agency, if applicable. As such, priority 4 issues will be due at the time the specific Release is delivered and only at that time.

C. Schedule. The due dates, as set forth in Exhibit A, shall not be altered or waived by the Procuring Agency without prior written approval, through the Change Management process, as defined in Article 13.

D. Source Code. Software developed as a result of maintenance releases by the Contractor shall be delivered as a complete Application Deployment Package. The application deployment package must be able to reproduce a fully operational application that includes all base application functionality, all cumulative release functionality and including the functionality, as documented, verified and supported by the Contractor, which comprises the new application release.
For each maintenance release, the Application Deployment Package shall be updated and shall be kept by an identified escrow agent at the contractor's own expense. The application deployment package shall be in magnetic or digital form on media specified by the Procuring Agency. The escrow agent shall be responsible for storage and safekeeping of the storage media. The Procuring Agency shall be listed with said escrow agent as an authorized recipient of the storage media which shall contain the most recent application maintenance release deployment package.

E. License. Contractor hereby grants Procuring Agency renewal of existing software licenses procured by the Procuring Agency as part of the original application deployment.

The Procuring Agency reserves its right to a perpetual, royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for governmental purposes, the source code developed under this agreement.

ARTICLE 3 - COMPENSATION

A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for Deliverables and Subscription Maintenance Services per the schedule outlined in Exhibit A.

B. Payment. The total compensation under this Agreement shall not exceed $_____ (One hundred thirty eight thousand, five hundred sixty one dollars sixty six cents) including New Mexico gross receipts tax.

December 01, 2009 – November 30 , 2010	**$591,847.00**

Billing shall take place quarterly with the invoicing detailed to reflect monthly charge for services.

Payment shall be made for Accepted Deliverables, and performance of Subscription Maintenance Services, as described in Exhibit A, upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within

thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. Taxes.

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. N/A

ARTICLE 4 – ACCEPTANCE

A. Submission. Upon completion of agreed upon Deliverables and/or subscription services as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable and/or subscription services provided, or a description of the Deliverable and/or subscription services provided to the Support Manager. Each Payment Invoice shall be for the fixed Deliverable price and/or subscription services provided as set forth in Article 2 and Exhibit A.

B. Acceptance. In accord with Section 13-1-158 NMSA 1978; the Executive Level Representative shall determine if the Deliverable, including subscription services, provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Support Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:

1) Complies with the Deliverable requirements and subscription services engaged as defined in Article 2 and Exhibit A;
2) Meets the performance measures for the Deliverable(s) of this Agreement;
3) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s) and maintenance services; and
4) Complies with all the terms and conditions of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or designee, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within fifteen (15) business days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) day business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) business days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall, at the sole discretion of the Agency, be deemed as in breach of this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT and the STATE PURCHASING AGENT. This Agreement shall terminate on **November 30, 2010** unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed one year, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

A. General. By either Party upon written notice to be delivered to the other party not less than fifteen (15) business days prior to the intended date of termination.

B. Appropriations. By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) business days prior to the effective date of the termination.

C. Obligations and Waiver. By termination pursuant to this Article, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PROCURING AGENCY AND THE STATE OF NEW MEXICO CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

1.) Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency.
2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the Procuring Agency;
3.) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
4.) Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
5.) Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
6.) Cooperate fully in the closeout or transition of support activities to permit operational continuity in the administration of Procuring Agency programs;
7.) Remit to the Procuring Agency the full amount of any reductions in the Procuring Agency's receipt of program funds due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct.
8.) Reimburse the Procuring Agency for all costs arising from hiring new contractor/subcontractors at potentially higher rates and for other costs incurred should this Agreement terminate due to the Contractor's default.
9.) Assist and cooperate with the Procuring Agency in the orderly and timely transfer of files, computer software, documentation, Know How, Intellectual Property and other materials, created or edited by the Contractor under this Agreement, including but not limited to, user manuals, functional and technical descriptions of each program and data flow diagrams.

B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall 1) Retain ownership of all Accepted Deliverables created pursuant to this Agreement; and 2) Pay the Contractor all amounts due for Accepted Deliverables prior to the effective date of such termination or expiration.

ARTICLE 8 –INDEMNIFICATION

A. General. The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) days after it receives notice thereof, notify, by certified mail, the legal counsel of the Procuring Agency, the Risk Management Division of the New Mexico General Services Department, and the DoIT.

B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Procuring Agency, as necessary, to satisfy any outstanding claim that the Procuring Agency may have against the Contractor.

ARTICLE 9 – INTELLECTUAL PROPERTY

A. Ownership.

Contractor hereby acknowledges and grants to the Procuring Agency a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorneys' fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Agency shall:

1.) Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
2.) Allow the Contractor to manage the defense and settlement of the claim as permitted by law; and
3.) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. Procuring Agency Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

1.) Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency's use of the product or service;
2.) Replace or modify the product or service so that it becomes non-infringing; or
3.) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

ARTICLE 11 - WARRANTIES

A. General. The Contractor hereby expressly warrants the Deliverables as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverables and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software. The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for 2yrs. years after Acceptance by the Executive Level Representative and implementation by the Procuring Agency. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Names of Contractor's Key Personnel]

B. Personnel Changes. The Contractor shall make interim arrangements to assure that the deliverable and/or subscription service schedule and quality is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations. The Procuring Agency will incur no costs related to the transition of Contractor personnel responsible for performing tasks under this Agreement.

ARTICLE 13 – STATUS OF CONTRACTOR

A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 - CHANGE MANAGEMENT

A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:

1) Deliverable requirements;
2) Compensation due under the terms of this Agreement; or
3) Due Date of any Deliverable as outlined in Exhibit A.

B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria: 1) The Support Manager shall draft a written Change Request for Executive Level Representative review and approval to include: the name of the person requesting the change, a summary of the required change, the start date for the change, the reason and necessity for change, the urgency level for the change, the elements to be altered, the impact of the change, the staffing plan associated with the change, the impact on the schedule for implementing the change, the cost impact, the risk assessment and a recommended approach to the change, and 2) The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) working days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change requests, once approved, become a part of the contract and become binding as a part of the original contract.

ARTICLE 15 – DEFAULT/BREACH

In case of default and/or breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or direct damages, and the Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6.

ARTICLE 16 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 17 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property before or after Acceptance, delivery, installation and use of the equipment, either at the Contractor's site or the Procuring Agency's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor's officers, employees or agents) made by the Procuring Agency or for losses occasioned by the Procuring Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture of the equipment, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 18 – ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

ARTICLE 19 – SUBCONTRACTING

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.

ARTICLE 20 – RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

ARTICLE 21 – CONFIDENTIALITY

Any confidential information provided to the contractor by the agency or, developed by the Contractor based on information provided by the agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the Procuring Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the Procuring Agency will result in direct, special and incidental damages.

ARTICLE 22 –CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 23 - RECORDS AND AUDIT

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during this Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, CIO, SPA, and DFA. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for services under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

ARTICLE 24 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

ARTICLE 25 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $500,000 dollars or;

(3) Have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of $250,000, $500,000 or $1,000,000, depending on the dollar value threshold in effect at that time.

ARTICLE 26 - MERGER, SCOPE, ORDER OF PRECEDENCE

A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 27 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication or email communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For PROCURING AGENCY

Don Francisco Trujillo, Deputy Secretary of State
New Mexico Secretary of State Office
325 Don Gaspar, Suite 300
Santa Fe, New Mexico 87503
Phone: 575-741-0909
Toll Free: 800-477-3632
dft@newmex.com

For CONTRACTOR

[Contractor Information entered here]

ARTICLE 28– GENERAL PROVISIONS

A. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

B. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

C. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

D. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in the county where the Procuring Agency's main office is located. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits.

E. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

F. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

ARTICLE 29 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements and other unexpired agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 30 – TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 31 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party who performance is affected.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: _____
Mary Herrera
New Mexico Secretary of State

By: _____ Date: _____
[Contractor's Representative Signature]

By: _____ Date: _____
IT Director
New Mexico Secretary of State's Office

Approved for legal sufficiency:

By: _____ Date: _____
Assistant Attorney General
General Counsel for the Secretary of State

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: [Enter Number Here]

By: _____ Date: _____
Taxation & Revenue Dept Representative's Signature

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Laws 2007, Chapter 290; Information Technology Rules NMAC 1.12 *et. seq.*; and any and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico:

By: _____ Date: _____
Marlin Mackey,
Secretary, Department of Information Technology

This Agreement has been approved by the GSD/SPD:

By: _____ Date: _____

Michael Vineyard,
State Purchasing Agent for the State of New Mexico

EXHIBIT A – SCOPE OF WORK AND PRICING SCHEDULE

A. Goals. To maintain productive operation of the Voter Registration Hardware, Firmware and Software equipment and systems and provide technical support as outlined in the Deliverables listed below.

B. Objectives. To assist the Procuring Agency by providing high quality hardware, firmware and software maintenance services, including:

1) Timely response to requests
2) Fast relief to high impact problems
3) Timely problem resolution
4) Corrections to defects
5) Enhance the software to support the evolving needs of the Procuring Agency

C. Activities. Provide custom high quality hardware, firmware and software maintenance services support, to include enhancements, bug fixes and technical support.

Contractor will be responsible for providing first-level operational support to users of the hardware, firmware and software maintenance services. Such first-level operational support will include:

Installation and operation of the hardware, firmware and software maintenance services;
6) User support in the use of the hardware, firmware and software.
7) Receiving and responding to user inquiries and reports of problems
8) Creating trouble tickets recording user reports of problems,
9) Conducting initial diagnoses of problems set out in Tickets
10) Routing unresolved Tickets to appropriate resources at Procuring Agency, where problems are not related to deficiencies
11) Provide information on the use of the hardware, firmware and software pursuant to any user inquiry

Second Level Support - If Procuring Agency encounters a deficiency, it will route the Ticket to the Contractor through the Designated Representative. The Contractor will address the deficiency in accordance with the notification process and priority levels and provide technical support services as specified in Deliverable Number 1 - Technical Support upon being contacted by a Designated Representative

Hardware/Firmware/Software and System Support/Maintenance Pricing

Hardware/Firmware/Software and System Support:

Includes: 1) Hardware/Firmware/Software maintenance & support [Identify Specific Components]
2) Agency's database system support & maintenance [Identify Specific System]

The Maintenance Fees for the Term shall be as follows:

State of New Mexico Payment Responsibility: $591,847.00

A. Deliverable – Voter Registration Electronic Management Systems Database Support and Maintenance

Deliverable One	Due Date	Compensation
Technical Support - Database	Monthly from November 30, 2009 – December 01, 2010	[Enter $ Amount] including GRT not to exceed $591,847.00

Task Item	Sub Tasks	Description
Database Management Support		***All information below pertains to Voter Registration databases and Voter Registration software.***
	Sub 1	*Contractor* will maintain the Voter Registration Database System.
	Sub 2	*Contractor* will conduct a system performance analysis and recommend tuning parameters if required.
	Sub 3	*Contractor* will provide database support.
	Sub 4	*Contractor* will outline procedures and provide scripts for performing routine database fixes to agency for review and acceptance. Agency User group will test for acceptance.
	Sub 5	*Contractor* shall assist with database server recovery. Contractor will do daily and monthly backups.
	Sub 6	*Contractor* will work with agency technicians to resolve System Issues.
	Sub 7	*Contractor* will coordinate with the Agency to set a schedule when database maintenance or upgrades will be performed.
	Sub 8	*Contractor* will identify, implement and test User requirements for the Oracle system when tuning the Undo Records (Rollback Segments). Agency User group will test for acceptance.
	Sub9	*Contractor* will perform database restore recovery when necessary.
	Sub10	*Contractor* will outline operational and technical requirements for a Backup and Recovery Strategy and present to agency for review and acceptance.
	Sub 11	*Contractor* will install Oracle software version 10.0 and provide Oracle software upgrades as they become available through the course of the contract.
	Sub12	*Contractor* will maintain system configurations, including hard drive partitioning and capacity management.
	Sub 13	*Contactor* will contact *Agency* if replacement of parts is necessary.

Deliverable Two	Due Date	Compensation
Technical Support – Application	Monthly from November 30, 2009 – December 01, 2010	Included in payment defined in Deliverable 1

Task Item	Sub-Tasks	Description
PPEE Application Support and Maintenance		***Contractor's PPEE software support as set forth in the Agreement. Level 1-3 first line of contact.***
	Sub 1	*Contractor* will maintain Help Desk support 24x7during an election to respond to any emergency that may arise and Monday – Friday 8:30 to 7:30 EST thru the duration of the contract to assist procuring agency in its performance of the following: • Hardware, Firmware and Software problem diagnosis. • Support of *Contractor's* approved third-party hardware, firmware and software required to run EAS Products.
	Sub 2	*Contractor* is responsible for maintaining and managing all software licenses compliance and firmware and hardware warranty agreements and will provide annual status of license and hardware warranty for agency review and acceptance.
	Sub 3	*Contractor* will implement database tuning when issues are identified by procuring agency Users.

Deliverable Three	Due Date	Compensation
Technical Support – Hardware, Firmware, Software, Network & OS	**Monthly from November 30, 2009 – December 01, 2010**	**Included in payment defined in Deliverable 1**

Task Item	Sub-Tasks	Description
Software, Firmware, Hardware, Networking, OS and Application Maintenance		***All information pertains to Elections Systems & Software Voter Registration Firmware, Hardware Networking, OS and Applications.***
Network	**Sub 1**	*Contractor* will provide Network security and Router maintenance of Voter Registration Firmware, Hardware and Software.
Firmware, Hardware & Software	**Sub 1**	*Contractor* will provide OS patches and upgrades of Voter Registration Firmware, Hardware and Software.
	Sub 2	*Contractor* will provide monitoring of Voter Registration Devices that have automated alerting capability and Systems Alerts.
Hosting	**Sub 1**	*Contractor* will maintain the Primary Location at Department of Information Technology in Santa Fe and Secondary Recovery Hosting Site at Oso Grande in Albuquerque for the Agency pertaining to Voter Registration Firmware, Hardware and Software.

[FR Doc. 2010–11779 Filed 5–17–10; 8:45 am]

BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

[OE Docket No. PP–366]

Application To Rescind Presidential Permit; Joint Application for Presidential Permit; Fraser Papers Inc. and Twin Rivers Paper Company Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Fraser Papers Inc. (Fraser) and Twin Rivers Paper Company Inc. (Twin Rivers) filed a joint application to voluntarily transfer the Fraser facilities authorized by Presidential Permit No. PP–11, as amended, to Twin Rivers. The application requested that the Department of Energy (DOE) rescind the Presidential permit held by Fraser and simultaneously issue a permit to Twin Rivers covering the same international transmission facilities.

DATES: Comments, protests, or requests to intervene must be submitted on or before June 17, 2010.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by e-mail to *Christopher.Lawrence@hq.doe.gov,* or Michael T. Skinker (Program Attorney) at 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. Existing Presidential permits are not transferable or assignable. However, in the event of a proposed voluntary transfer of facilities, in accordance with DOE regulations at 10 CFR 205.323, the existing permit holder and the transferee are required to file a joint application with DOE that includes a statement of reasons for the transfer.

On April 16, 2010, Fraser and Twin Rivers (collectively the "Applicants") jointly filed an application with DOE requesting rescission of Presidential Permit No. PP–11, as amended, issued to Fraser and a simultaneous issuance of a Presidential permit to Twin Rivers for the same international transmission facilities. The international transmission facilities authorized by Presidential Permit No. PP–11, as amended, include one three-phase 6.6-Kilovolt (kV) transmission line and one three-phase 138-kV transmission line operated at 69-kV. These lines connect Fraser's paper making facility in Madawaska, Maine with their paper pulp facility in Edmundston, New Brunswick, Canada.

The requested transfer of the permit is due to a change in ownership of the existing transmission facilities that was occasioned by an Asset Purchase Agreement between the Applicants as part of Fraser's bankruptcy restructuring process and will not involve any new construction or change in the operation of the previously authorized international transmission lines. The Applicants have requested that the issuance of the permit to Twin Rivers be made effective upon the closing of the sale of the facilities, which occurred on April 29, 2010.

Since restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in the Federal Energy Regulatory Commission Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC Stats. & Regs. ¶ 31,036 (1996)), as amended. In furtherance of this policy, on July 27, 1999 (64 FR 40586), DOE initiated a proceeding in which it noticed its intention to condition existing and future Presidential permits, appropriate for third party transmission, on compliance with a requirement to provide non-discriminatory open access transmission service. That proceeding is not yet complete. In that proceeding, DOE determined that the international transmission lines authorized by the Presidential permit currently held by Fraser are not appropriate for third party transmission, because the lines are not connected to the U.S. domestic electric power system. Therefore, a requirement to provide non-discriminatory open access transmission service will not be added to the permit being issued to Twin Rivers.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with § 385.211 or 385.214 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211, 385.214). Fifteen copies of each comment, petition and protest should be filed with DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Glen McMillan, Senior VP and CFO, Fraser Papers Inc., Suite 200 Brookfield Place, 181 Bay Street, Toronto, Ontario M5J 2T3 Canada; Mr. Justin B. Beber, VP, Twin Rivers Paper Company Inc., Suite 300 Brookfield Place, 181 Bay Street, Toronto, Ontario M5J 2T3 Canada; and Steven A. Hudson, Esq., Preti, Flaherty, Beliveau & Pachios, LLP, 45 Memorial Circle, P.O. Box 1058, Augusta, ME 04330–1058.

Before a Presidential permit may be granted or amended, DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (i.e., granting the Presidential permit or amendment, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrences of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded electronically at *http://www.oe.energy.gov/permits/permits_pending.htm.* Upon reaching the home page, select "Pending Applications."

Issued in Washington, DC, on May 13, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–11815 Filed 5–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of International Regimes and Agreements; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice has been issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy ("the 123 Agreement").

This subsequent arrangement concerns the Arrangements and Procedures Agreed Between the Government of the United States of America and the Government of India Pursuant to Article 6(iii) of the Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy ("the Arrangements and Procedures"). The Arrangements and Procedures are proposed as part of the requirements for bringing into effect the rights conveyed by Article 6(iii) of the 123 Agreement regarding reprocessing or other alteration in form or content of nuclear material transferred pursuant to the 123 Agreement and nuclear material and by-product material used in or produced through the use of nuclear material, non-nuclear material, or equipment so transferred. These Arrangements and Procedures establish the conditions under which the Government of India may reprocess U.S.-obligated nuclear material within India at "a new national reprocessing facility dedicated to reprocessing safeguarded material under International Atomic Energy Agency safeguards" to be established by India. The Arrangements and Procedures will apply to the reprocessing of U.S.-obligated nuclear material at two such facilities within India. (Subject to the processing of additional subsequent arrangements, they may also apply to additional reprocessing facilities in the future.) The Arrangements and Procedures specify minimum requirements for reprocessing facility design, safeguards system design and installation, and implementation of IAEA safeguards at such facilities. The Arrangements and Procedures also specify an approach to implementation of the obligations in the 123 Agreement with respect to physical protection and storage of U.S.-obligated nuclear material at the new reprocessing facilities where U.S.-obligated nuclear material may be reprocessed. Finally, the Arrangements and Procedures establish a process under which the United States may suspend the reprocessing of U.S.-obligated nuclear material in India in exceptional circumstances, the circumstances of which are described in the Arrangements and Procedures.

In accordance with section 131a(1) of the Atomic Energy Act of 1954, as amended, I have determined that this subsequent arrangement is not inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than the later of: (1) The lapse of fifteen calendar days after the date of publication of this notice; (2) the lapse of fifteen days of continuous session after I have provided the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report stating the reasons for entering into this subsequent arrangement; and (3) the lapse of thirty days of continuous session after I have provided Congress the report required by section 201(b) of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (Pub. L. 110–369). All of these time periods will run concurrently.

Dated: May 11, 2010.

Steven Chu,

Secretary of Energy.

[FR Doc. 2010–11813 Filed 5–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13694–000]

Current Connection, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 11, 2010.

On March 30, 2010, Current Connection, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the St. Clair Hydrokinetic Project, located on the St. Clair River, in St. Clair County, Michigan. 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) The installation of 396 turbine-generating units which will be arranged in 6 turbine farms with each farm consisting of 11 turbine groups, containing 6 units each; (2) a control house containing control and synchronizing panels, power conditioning equipment, protective relaying, and communications equipment; (3) a proposed 200-foot-long, 46-kilovolt transmission line; and (4) appurtenant facilities. The proposed St. Clair Hydrokinetic Project would have an average annual generation of 155 gigawatt-hours.

Applicant Contact: Timothy D. Smith, CEO, Current Connection, LLC, 1300 Rankin Drive, Troy, MI 48083; phone: (248) 583–2060.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via e-mail at *bryan.roden-reynolds@ferc.gov.*

The deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications is 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 of the correspondence 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 Commission's "eLibrary" link at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13694) in the docket number field to access the

document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11784 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13697–000]

Mississippi 16 Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 11, 2010.

On April 5, 2010 Mississippi 16 Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam #16 Hydroelectric Project, located on the Mississippi River, in Rock Island County, Iowa. 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) The powerhouse; (2) installation of four 5.2 megawatt bulb turbines; (3) a proposed 1.5-mile-long, 69-kilovolt transmission line; (4) switchyard; and (5) appurtenant facilities. The proposed Mississippi River Lock and Dam #16 Hydroelectric Project would have an average annual generation of 95.5 gigawatt-hours.

Applicant Contact: Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, Idaho 83442; phone: (208) 745–0834.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via e-mail at *bryan.roden-reynolds@ferc.gov.*

The deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications is 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 of the correspondence 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 Commission's "eLibrary" link at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13697) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11786 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13711–000]

Lock+ Hydro Friends Fund VII; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 11, 2010.

On April 13, 2010 Lock+ Hydro Friends Fund VII filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Green Wave Project, located on the Mississippi River, in Pike County, Missouri. 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) One lock frame module of ten hydropower turbines, which will be installed in a single row; (2) a new gate; (3) a proposed 3.5-mile-long, 69-kilovolt transmission line; (4) flow control door assemblies; and (5) appurtenant facilities. The proposed Domage Project would have an average annual generation of 65.745 gigawatt-hours.

Applicant Contact: Wayne F. Krouse, Chairman & CEO, Hydro Green Energy, LLC, 5090 Richmond Ave, #390, Houston, Texas, 77056.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via e-mail at *bryan.roden-reynolds@ferc.gov.*

The deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications is 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 of the correspondence 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 Commission's "eLibrary" link at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13711) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11790 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13710–000]

Lock+ Hydro Friends Fund VIII; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 11, 2010.

On April 13, 2010 Lock+ Hydro Friends Fund VIII filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Domage Project, located on the Mississippi River, in Lincoln County, Missouri and Calhoun County, Illinois. 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) One lock frame module of ten hydropower turbines, which will be installed in a single row; (2) a new gate; (3) a proposed 4.5-mile-long, 69-kilovolt transmission line; (4) flow control door assemblies; and (5) appurtenant facilities. The proposed Domage Project would have an average annual generation of 52.705 gigawatt-hours.

Applicant Contact: Wayne F. Krouse, Chairman & CEO, Hydro Green Energy, LLC, 5090 Richmond Ave., #390, Houston, Texas, 77056.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via e-mail at *bryan.roden-reynolds@ferc.gov.*

The deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications is 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 of the correspondence 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 Commission's "eLibrary" link at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13710) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11789 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13696–000]

Mississippi 17 Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

May 11, 2010.

On April 5, 2010, Mississippi 17 Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam #17 Hydroelectric Project, located on the Mississippi River, in Louisa County, Iowa. 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) The powerhouse; (2) installation of four 4.9 megawatt bulb turbines; (3) a proposed 5.7-mile-long, 69-kilovolt transmission line; (4) switchyard; and (5) appurtenant facilities. The proposed Mississippi River Lock and Dam #17 Hydroelectric Project would have an average annual generation of 80 gigawatt-hours.

Applicant Contact: Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, Idaho 83442; phone: (208) 745–0834.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via e-mail at *bryan.roden-reynolds@ferc.gov.*

The deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications is 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 of the correspondence 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 Commission's "eLibrary" link at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13696) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11785 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13698–000]

Mississippi 12 Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 11, 2010.

On April 5, 2010 Mississippi 12 Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam #12

Hydroelectric Project, located on the Mississippi River, in Jo Daviess County, Illinois. 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) The powerhouse; (2) installation of four 6 megawatt bulb turbines; (3) a proposed 5-mile-long, 69-kilovolt transmission line; (4) switchyard; and (5) appurtenant facilities. The proposed Mississippi River Lock and Dam #12 Hydroelectric Project would have an average annual generation of 109.6 gigawatt-hours.

Applicant Contact: Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, Idaho 83442; phone: (208) 745–0834.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via e-mail at *bryan.roden-reynolds@ferc.gov.*

The deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications is 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 of the correspondence 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 Commission's "eLibrary" link at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13698) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11787 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13699–000]

Mississippi 13 Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

May 11, 2010.

On April 5, 2010 Mississippi 13 Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam #13 Hydroelectric Project, located on the Mississippi River, in Whiteside County, Iowa. 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) The powerhouse; (2) installation of four 7.17 megawatt bulb turbines; (3) a proposed 1-mile-long, 69-kilovolt transmission line; (4) switchyard; and (5) appurtenant facilities. The proposed Mississippi River Lock and Dam #12 Hydroelectric Project would have an average annual generation of 129 gigawatt-hours.

Applicant Contact: Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, Idaho 83442; phone: (208) 745–0834.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via e-mail at *bryan.roden-reynolds@ferc.gov.*

The deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications is 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 website (*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 of the correspondence 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 Commission's "eLibrary" link at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13699) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11788 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–23–000]

Overland Trail Transmission, LLC; Notice of Baseline Filing

May 11, 2010.

Take notice that on May 7, 2010, Overland Trail Transmission, LLC submitted its baseline filing of its Statement of Operating Conditions for transportation services provided under section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion 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 and 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 date as indicated below. Anyone filing an intervention or protest must serve a

copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Tuesday, May 18, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11782 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–17–006]

DCP Guadelupe Pipeline, LLC; Notice of Compliance Filing

May 11, 2010.

Take notice that on May 7, 2010, DCP Guadalupe Pipeline, LLC, (formerly Duke Energy Guadalupe Pipeline, Inc.) filed revised rates based on the Commission's Order on Rehearing issued on April 15, 2010, in Docket Nos. PR05–17–000 and PR05–17–005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the 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 Tuesday, May 18, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11795 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–30–002]

Corning Natural Gas Corporation; Notice of Compliance Filing

May 11, 2010.

Take notice that on May 3, 2010, Corning Natural Gas Corporation, (Corning) filed its Statement of section 311 Operating Conditions in compliance with the March 23, 2010 Letter Order approving a Stipulation and Agreement of Settlement and pursuant to section 284.123(e) of the Commission's regulations.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 Tuesday May 18, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11792 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

May 13, 2010.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 20, 2010; 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

958TH—MEETING; REGULAR MEETING

[May 20, 2010 10 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Assessment—2010 Summer Assessment.
	Electric	
E–1	EL10–39–000	SunZia Transmission, LLC
E–2	OMITTED.	
E–3	OMITTED.	
E–4	OMITTED.	
E–5	OMITTED.	
E–6	ER09–1581–001, ER09–1581–003	Midwest Independent Transmission System Operator, Inc.
E–7	EL10–56–000	Western Electric Coordinating Council.
E–8	ER97–4143–021, ER97–4143–022	AEP Service Corporation.
	ER07–1130–003, ER07–1130–004	AEP Energy Partners, Inc.
	ER98–2075–026, ER98–2075–027	CSW Energy Services, Inc.
	ER98–542–023, ER98–542–024	Central and South West Services, Inc.
	ER01–1099–013	Cleco Power LLC.
	ER02–1406–014	Acadia Power Partners, LLC.
	ER99–2928–010	Cleco Evangeline LLC.
	ER99–1757–016	The Empire District Electric Company.
	ER99–1005–011	Kansas City Power & Light Company.
	ER09–304–002	KCP&L Greater Missouri Operations Company.
	ER98–511–013	Oklahoma Gas and Electric Company.
	ER97–4345–025	OGE Energy Resources, Inc.
	ER99–1610–036	Southwestern Public Service Company.
	ER03–9–017, ER06–1313–005	Westar Energy, Inc.
	ER98–2157–018	Kansas Gas and Electric Company.
E–9	ER10–902–000	ISO New England Inc. and New England Power Pool.
E–10	ER09–1682–000, ER09–1682–004, ER09–1682–005	New York Independent System Operator, Inc.
E–11	EL07–39–004, EL07–39–005, ER08–695–002, ER08–695–003	New York Independent System Operator, Inc.
E–12	ER09–1064–003, ER09–1064–004	California Independent System Operator Corporation.
E–13	ER09–1064–001	California Independent System Operator Corporation.
E–14	ER05–1410–015, EL05–148–015, ER09–412–008, ER09–412–010	PJM Interconnection, L.L.C.
E–15	EL09–11–001	Interstate Power and Light Company v. ITC Midwest, LLC.
E–16	ER10–73–001, ER10–74–001, ER10–73–002, ER10–74–002	Midwest Independent Transmission System Operator, Inc.
	EL10–9–001	Dairyland Power Cooperative v. Midwest Independent Transmission System Operator, Inc.
	Gas	
G–1	RM09–2–000	Contract Reporting Requirements of Intrastate Natural Gas Companies.
G–2	RP10–134–000, RP10–450–000	Columbia Gulf Transmission Company.
	Hydro	
H–1	P–405–096, P–2355–012	Exelon Generation Company, LLC.
H–2	P–405–097	Exelon Generation Company, LLC.
H–3	P–13388–001, P–13389–001, P–13397–001, P–13413–001	Northeast Hydrodevelopment, LLC.
	Certificates	
C–1	CP09–68–001	Texas Eastern Transmission, LP.
C–2	CP06–398–002	MoBay Storage Hub, LLC.
C–3	CP09–420–001	Gulf South Pipeline Company, LP.
C–4	CP10–2–000	Southern Star Central Gas Pipeline, Inc.
C–5	CP09–444–000	Tennessee Gas Pipeline Company.
C–6	RP10–173–000	Southern LNG Inc.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit

http://www.CapitolConnection.org or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2010–11914 Filed 5–14–10; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–22–000]

Eagle Rock Desoto Pipeline, L.P.; Notice of Rate Election

May 11, 2010.

Take notice that on May 3, 2010, Eagle Rock Desoto Pipeline, L.P., (Desoto) filed a Notice of Rate Election pursuant to section 284.123(b)(1)(ii) of the Commission's regulations. Desoto proposes to utilize its presently effective Texas Railroad Commission city-gate transportation rate for interruptible transportation service on its Central and North System pursuant to section 311 of the Natural Gas Act. The interruptible transportation rate for both systems is 20.5 cents/MMBtu plus 0.5 percent fuel reimbursement.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Tuesday, May 19, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11793 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–424–000]

Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization

May 11, 2010.

Take notice that on May 6, 2010, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP10–424–000, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA). Natural seeks authorization to acquire from Cheniere Creole Trail Pipeline, L.P., formerly Cheneiere Sabine Pass Pipeline, L.P. (Creole Trail) approximately 1,316 feet of 16-inch diameter pipeline which is part of a lateral connecting Creole Trail's facilities transporting gas from its Sabine Pass LNG Terminal to Natural's pipeline facilities, all in Cameron Parish, Louisiana. On April 29, 2010, Creole Trail filed a separate prior notice request, in Docket No. CP10–256–000, for authorization to abandon the subject facilities under its blanket certificate authority. The cost of the facilities to be acquired by Natural is approximately $363,000. Natural proposes to acquire the facilities under its blanket certificate issued in Docket No. CP82–402–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact *FERC at FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application may be directed to Bruce H. Newsome, Vice President, Regulatory Products and Services, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515–7918, or via telephone at (630) 725–3070, or by e-mail at *bruce_newsome@kindermorgan.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11794 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13212–001;13211–001]

Kenai Hydro, LLC; Notice of Scoping Meetings, Environmental Site Review, and Soliciting Scoping Comments

May 11, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project Nos.:* P–13212–001 and P–13211–001.

c. *Date Filed:* August 6, 2009.

d. *Applicant:* Kenai Hydro, LLC.

e. *Name of Project:* Grant Lake/Falls Creek Hydroelectric Project.

f. *Location:* Grant Lake, Grand Creek, and Falls Creek on the Kenai Peninsula, near the community of Moose Pass, Alaska. The project would occupy lands within the Chugach National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brad Zubeck, Kenai Hydro, LLC, 3977 Lake Street, Homer, Alaska 99603; (907) 335–6204.

i. *FERC Contact:* Mark Ivy at (202) 502–6156 or mark.ivy @ferc.gov.

j. *Deadline for filing scoping comments:* July 6, 2010.

All documents 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.

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 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.

k. This application is not ready for environmental analysis at this time.

l. The project would consist of: a new 10-foot-high, 120-foot-wide concrete gravity dam on Grant Lake, with a 60-foot-wide spillway section at elevation 709 feet mean sea level (msl); the 1,790-acre Grant Lake with active storage of 48,000 acre-feet of storage between 675 and 706 feet msl; a new multi-level intake at Grant Lake; a new 2,800-foot-long, 10-foot-high horseshoe power tunnel; a new 8-foot-diameter, 110-foot-high surge tank; a new 650-foot-long, 66-inch-diameter steel penstock; a new powerhouse containing two Francis generating units with total installed capacity of 4.5 MW; a new 200-foot-long open channel tailrace; a 3.5-mile-long, overhead or underground transmission line at 115, 69, or 24.9–kilovolt (kV), or twelve 15–kV; a new 3.4-mile-long access road; and appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process.*

The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one daytime scoping meeting and one evening scoping meeting. The daytime scoping meeting will focus on resource agency and non-governmental organization concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Wednesday, June 2, 2010.
Time: 7 p.m. (Alaska ST).
Place: Moose Pass Community Hall.
Address: Mile 29.5 Seward Highway, Moose Pass, AK 99631.

Daytime Scoping Meeting

Date: Thursday, June 3, 2010.
Time: 10 a.m. (Alaska ST).
Place: Moose Pass Community Hall.
Address: Mile 29.5 Seward Highway, Moose Pass, AK 99631.

Copies of the Scoping Document 1 (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link [see item (m) above].

Environmental Site Review

The Applicant and FERC staff will conduct a project environmental site review beginning at 8 a.m. (Alaska ST) on June 2, 2010. All interested individuals, organizations, and agencies are invited to attend. Participants should meet at Scenic Mountain Air boat launch, 31702 Depot Road, Moose Pass, AK 99631. Participants should be in good health and prepared/able to hike without assistance in unimproved trail conditions for the entire day (± 3 miles with 200 feet of elevation gain). Participants should also pack their own lunch, snacks and water, wear waterproof, rugged footwear, and be prepared for inclement and potentially cold weather conditions. Anyone with questions about the environmental site review (or needing directions) should contact Jenna Borovansky at (208) 765–1413 or *jborovansky@longviewassociates.com*. Those individuals planning to participate in the environmental site review should notify Ms. Borovansky of their intent, no later than May 23, 2010.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the

resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11783 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2144–038; Project No. 2225–013]

City of Seattle, Public Utility District No. 1 of Pend Orielle County; Notice of Technical Conference and Site Visit for the Boundary Hydroelectric Project and Sullivan Creek Hydroelectric Project Settlement Agreement and Soliciting Scoping Comments on the Proposed Sullivan Creek Hydroelectric Project Surrender

May 11, 2010.

On March 29, 2010, the City of Seattle (City) and the Public Utility District No. 1 of Pend Oreille, County, Washington (District) filed a joint comprehensive settlement agreement (Settlement), explanatory statement and a request to consolidate the processing of the City's relicensing of the Boundary Hydroelectric Project No. 2144–038, and the District's surrender of its license for the Sullivan Creek Hydroelectric Project No. 2225–013. On April 2, 2010, the District filed an application to surrender the Sullivan Creek Project. Parts of both projects occupy lands within the Colville National Forest.

Technical Conference

Commission staff will hold a technical conference to discuss the proposed license articles for a new license for the Boundary Project and the proposed Sullivan Creek license surrender conditions submitted as part of the joint Settlement.

The technical conference will be held on Thursday, June 10, 2010, beginning at 9 a.m. (PST) at Quality Inn Oakwood, 7919 North Division, Spokane, WA. Participation at the technical conference will be limited to Commission staff and the Settlement Parties. However, the public is free to attend and provide comments on the scope of issues that should be addressed in the Commission's environmental assessment. The technical conference will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. The conference and site visit described below are posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Site Visit

On Wednesday, June 9, 2010, Commission staff, along with representatives of the City and the District, will conduct a site visit of the Boundary and Sullivan Creek Projects. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the Boundary powerhouse gate at 10:15 a.m. (PST). For those persons only interested in the Sullivan Creek surrender, we will be at the Sullivan Lake Dam at 12:15 p.m. In addition, all participants are responsible for their own transportation to the site and throughout the day. Anyone planning to attend the site visit must notify Mary Pat Dileva at *marypat.dileva@seattle.gov* by Wednesday, June 2, 2010. RSVPs are required for security and planning purposes.

Scoping for the Surrender of the District's Sullivan Creek Project

Commission staff intends to prepare an environmental assessment (EA) covering both the relicensing of the Boundary Project and the surrender of the Sullivan Creek Project, pursuant to the National Environmental Policy Act of 1969, as amended. Scoping of the relicensing of the Boundary Project was completed in 2006. To support and assist our environmental review, we are conducting paper scoping of the Sullivan Creek surrender to ensure that all pertinent issues are identified and analyzed, and the EA is thorough. This notice solicits written comments from Federal, State, and local resource agencies, Indian tribes, and other interested persons through the scoping process.

All scoping comments should be submitted in writing to the Commission no later than June 25, 2010. All correspondence must clearly show at the top of the page: "Sullivan Creek Hydroelectric Project, FERC No. 2225–013." Send your comments about the project to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Scoping comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

For further information, contact David Turner at (202) 502–6091, or by e-mail at *david.turner@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11791 Filed 5–17–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2010–0208; FRL–9152–5]

Adequacy Determination for the Motor Vehicle Emissions Budgets in the Truckee Meadows PM_{10} Maintenance Plan for Transportation Conformity Purposes; State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that the Agency has found that motor vehicle emissions budgets (MVEBs) for particles with an aerodynamic diameter of a nominal 10 microns or less (PM_{10}), contained in the *Redesignation Request and Maintenance Plan for the Truckee Meadows 24-Hour PM_{10}* Non-Attainment Area ("Truckee Meadows PM_{10} Maintenance Plan"), are adequate for transportation conformity purposes. The Truckee Meadows PM_{10} Maintenance Plan was submitted to EPA on July 13, 2009 by the Nevada Division of Environmental Protection as a revision to the Nevada State Implementation Plan. As a result of our adequacy finding, the Washoe County Regional Transportation Commission and the U.S. Department of Transportation must use these budgets in future conformity analyses.

DATES: This finding is effective June 2, 2010.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901; (415) 947–4147 or *kaplan.eleanor@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to the Nevada Division of Environmental Protection on May 5, 2010 stating that the motor vehicle emissions budgets for PM_{10} in the submitted Truckee Meadows PM_{10} Maintenance Plan are adequate. Receipt of these motor vehicle emissions budgets was announced on EPA's transportation conformity Web site on January 19, 2010, and no comments were submitted. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

The Truckee Meadows PM_{10} Maintenance Plan identifies PM_{10} MVEBs for the Truckee Meadows nonattainment area for years 2009, 2013, 2018 and 2020. The adequate budgets are presented in the following table:

TRUCKEE MEADOWS PM_{10} MAINTENANCE PLAN MOTOR VEHICLE EMISSIONS BUDGETS, TRUCKEE MEADOWS NONATTAINMENT AREA

[Winter season, pounds per day]

2009 Emissions Budget	21,195
2013 Emissions Budget	20,871
2018 Emissions Budget	20,836
2020 Emissions Budget	20,816

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

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

Dated: April 30, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–11831 Filed 5–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9152–7]

Science Advisory Board Staff Office; Notification of a Public Teleconference and Public Meeting of the SAB Polycyclic Aromatic Hydrocarbon (PAH) Mixtures Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public meetings of the SAB Polycyclic Aromatic Hydrocarbon (PAH) Mixtures Review Panel: A teleconference and a face-to-face meeting to review EPA's draft technical document, *Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures,* External Review Draft.

DATES: There will be a public teleconference on June 8, 2010 from 2 p.m. to 4 p.m. (Eastern Time). The public meeting will be held on June 21, 2010 from 9 a.m. to 5 p.m. (Eastern Time), June 22, 2010 from 9 a.m. to 5 p.m. and June 23, 2010 from 9 a.m. to 3 p.m. (Eastern time).

ADDRESSES: The teleconference will be conducted by phone only. The face-to-face meeting on June 21–23, 2010 will be held at the Washington Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005; telephone (202) 737–2200.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning the public teleconference and/or public meeting may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 343–9878 or at *yeow.aaron@epa.gov.* General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the SAB PAH Mixtures Review Panel will hold a public teleconference to discuss the plans for the subsequent public face-to-face meeting to conduct a peer review of the EPA's draft technical document, *Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures,* External Review Draft (February 2010). The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations.

The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA's Integrated Risk Information System (IRIS) is an electronic database containing descriptive and quantitative toxicological information on human health effects that may result from chronic exposure to various substances in the environment. This information supports human health risk assessments and includes hazard identification and dose-response data and derivations of oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for noncancer effects and oral slope factors and oral and inhalation unit risks for cancer effects. IRIS is prepared and maintained by EPA's National Center for Environmental Assessment (NCEA) within the Office of Research and Development (ORD). NCEA's IRIS Program has developed a draft technical document entitled, *Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures,* for estimating cancer risk from exposure to PAH mixtures. ORD has requested that the Science Advisory Board (SAB) conduct a review of this draft document.

In response to ORD's request, the SAB Staff Office solicited nominations of experts and formed a review panel for PAH Mixtures [**Federal Register** Notice dated October 21, 2009 (74 FR 54047–54048)]. The panel will conduct a review of EPA's February 2010 External Review Draft of its technical document, *Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures.* Specifically, the panel is being asked to provide recommendations on the rationale for recommending an RPF approach, the evaluation of the carcinogenicity of individual PAHs, the methods for dose response assessment

and RPF calculation, the selection of PAHs to include in the RPF approach, the derivation of RPFs for selected PAHs, and the uncertainties and limitations associated with the RPF approach. The purpose of the teleconference is for the panel to receive a briefing on the draft technical document and for members to clarify the charge to the panel. During the face-to-face meeting, the panel will review the technical document.

Availability of Meeting Materials: Agendas and materials in support of these meetings will be placed on the EPA Web site at *http://www.epa.gov/sab* in advance of each meeting. For technical questions and information concerning EPA's draft document, please contact Dr. Lynn Flowers at (703) 347–8537, or *flowers.lynn@epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. At the face-to-face meeting, presentations will be limited to five minutes, with no more than a total of one hour for all speakers. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via e-mail) at the contact information noted above by June 1, 2010 for the teleconference and by June 14, 2010 for the face-to-face meeting, to be placed on the list of public speakers. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by June 1, 2010 for the teleconference and by June 14, 2010 for the face-to-face meeting so that the information may be made available to the Committee members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. Submitters are requested to provide versions of signed documents, submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 343–9878 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: May 12, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2010–11830 Filed 5–17–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $49.3 million guarantee to support the U.S. export of aircraft tooling equipment to Mexico and the United Kingdom. The U.S. exports will enable the Mexican and British facilities to produce composite aircraft parts. All of the new Mexican and British production will be sent back to the U.S. for final assembly into business aircraft. Available information indicates that this type of supply chain structure exists because of the need for industry participants to produce technically specific goods at proprietary facilities. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 947, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

Jonathan J. Cordone,

Senior Vice President and General Counsel.

[FR Doc. 2010–11801 Filed 5–17–10; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 13, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 19, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214, or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0398.

Title: Sections 2.948 and 15.117(g)(2), Equipment Authorization Measurement Standards.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents and Responses: 725 respondents; 725 responses.

Estimated Time Per Response: 5 – 30 hours.

Frequency of Response: On occasion and other three year reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 4(i), 302, 303(c), 303(f), 303(g), 303(r), and 309(a).

Total Annual Burden: 21,160 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is minimal exemption from the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), and 47 CFR 0.459(d) of the Commission's rules, that is granted for trade secrets, which may be submitted to the Commission as part of the documentation of the test results. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this information collection as a revision to the Office of Management and Budget (OMB) after this comment period to obtain the full three year clearance from them. There is a change in the Commission's burden estimates. The 60 hour program change increase is due to the new reporting requirement which is discussed further below. There is also a 12,000 hour adjustment increase in burden which reflects the significant number of laboratories filing test site descriptions. This increase has been observed in the recent past, and is in large part due to Mutual Recognition Agreements (MRAs) signed with various foreign economic entities, by testing facilities filing site descriptions under Section 2.948, prior to submittal of equipment for authorization.

The revision for this information collection is as follows: On September 14, 2009, the Commission's Office of Engineering and Technology (OET) identified and requested comment on certain types of information that an applicant should provide to be considered an accreditation body of test laboratories under the Commission's rules, see DA 09–2049. Under the Commission's rules, section 2.948(d) sets forth the requirements for accreditation bodies seeking recognition from the FCC as a laboratory accreditation body. Accreditation bodies seeking such recognition from the Commission must file a report of their qualifications with the OET. They are only required to file this information once. The Commission currently has two recognized accreditation bodies, and is about to recognize a third. Additional accreditation bodies may be recognized.

The currently OMB–approved requirements for this information collection requires that each Electro–Magnetic Compatibility (EMC) testing facility that performs equipment testing in support of any request for equipment authorization to file a test site description, either with the Commission or with a Commission–approved accrediting body.

The test site description and the supporting information documents that the EMC testing facility complies with the testing standards used to make the measurements that support any request for equipment authorization.

In addition, the referenced 47 CFR Part 15 rules require that equipment manufacturers insert in their files a statement explaining the basis on which it relies to ensure that at least 97.5% of all production units of the test sample that are manufactured have a noise figure of no greater than 14 dB.

The Commission or the accrediting body uses the information from these test sites and supporting documentation, which accompany all requests for equipment authorization: 1) to ensure that the data are valid and that proper testing procedures are used;

2) to ensure that potential interference to radio communications is controlled; and

3) to investigate complaints of harmful interference or to verify the manufacturer's compliance with 47 CFR rule sections 2.948and 15.117(g)(2) of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–11827 Filed 5–17–10; 8:45 am]

BILLING CODE 6712-01-S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, May 20, 2010

Date: May 13, 2010.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 20, 2010, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

TEM NO.

ITEM NO.	BUREAU	SUBJECT
1	WIRELESS TELE–COMMUNICATIONS	TITLE: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services (WT Docket No. 09–66) SUMMARY: The Commission will consider the 14th edition of the Mobile Wireless Competition Report, analyzing the state of competition in the mobile industry by expanding upon previous FCC reports and considering the broader mobile wireless ecosystem.
2	OFFICE OF ENGINEERING AND TECHNOLOGY.	TITLE: Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band (WT Docket No. 07–293) and Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band (IB Docket No. 95–91 and GEN Docket No. 90–357, RM–8610) SUMMARY: The Commission will consider a Report and Order enabling robust mobile broadband use of 25 MHz of spectrum in the 2.3 GHz Wireless Communications Service (WCS) band while protecting neighboring incumbent operations and a Second Report and Order implementing rules for terrestrial repeaters to provide greater certainty for both satellite radio and WCS licensees.
3	WIRELINE COMPETITION	TITLE: Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6) and A National Broadband Plan for Our Future (GN Docket No. 09–51) SUMMARY: The Commission will consider a Notice of Proposed Rulemaking initiating reforms to the E–Rate program to make broadband more accessible in schools and libraries, and to cut red tape.
4	WIRELINE COMPETITION	TITLE: Implementation of Section 224 of the Act (WC Docket No. 07–245) and A National Broadband Plan for Our Future (GN Docket No. 09–51) SUMMARY: The Commission will consider an Order and Further Notice of Proposed Rulemaking to implement the National Broadband Plan recommendations to foster competition and broadband deployment by ensuring nondiscriminatory, just, and reasonable access to utility poles.
5	WIRELINE COMPETITION	TITLE: Local Number Portability Porting Interval and Validation Requirements (WC Docket No. 07–244) and Telephone Number Portability (CC Docket No. 95–116) SUMMARY: The Commission will consider a Report and Order to standardize the processes for transferring telephone numbers in one business day to ensure the benefits of competition for consumers.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e–mail to: fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at www.fcc.gov/live.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to www.capitolconnection.gmu.edu.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e–mail at FCC@BCPIWEB.com.

Federal Communications Commission.

Bulah P. Wheeler,

Acting Associate Secretary,
Office of the Secretary,
Office of Managing Director.

[FR Doc. 2010–11979 Filed 5–14–10; 4:15 pm]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: Application For Consent to Exercise Trust Powers (3064–0025), and Insurance Sales Consumer Protections (3064–0140).

DATES: Comments must be submitted on or before July 19, 2010.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the name and number of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 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 OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie (address above).

SUPPLEMENTARY INFORMATION:

1. *Title:* Application for Consent to Exercise Trust Powers.

OMB Number: 3064–0025.

Form Number: FDIC 6200/09.

Frequency of Response: On occasion.

Affected Public: Insured State nonmember banks wishing to exercise trust powers.

Estimated Number of Respondents: 15.

Estimated Time per Response for Eligible Depository Institutions: 8 hours.

Estimated Time per Response for Institutions that do not Qualify as Eligible Institutions: 24 hours.

Total Annual Burden: 200 hours.

General Description of Collection: FDIC regulations (12 CFR 333.2) prohibit any insured State nonmember bank from changing the general character of its business without the prior written consent of the FDIC. The exercise of trust powers by a bank is usually considered to be a change in the general character of a bank's business if the bank did not exercise those powers previously. Therefore, unless a bank is currently exercising trust powers, it must file a formal application to obtain the FDIC's written consent to exercise trust powers. State banking authorities, not the FDIC, grant trust powers to their banks. The FDIC merely consents to the exercise of such powers. Applicants use form FDIC 6200/09 to obtain FDIC's consent.

2. *Title:* Consumer Protections for Depository Institution Sales of Insurance.

OMB Number: 3064–0140.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured State nonmember banks that sell insurance products; persons who sell insurance products in or on behalf of insured State nonmember banks.

Estimated Number of Respondents: 3,740.

Estimated Time per Response: 5 hours.

Total Annual Burden: 18,700 hours.

General Description of Collection: Respondents must prepare and provide certain disclosures to consumers (*e.g.,* that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

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 estimates of the burden of the information collections, 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 collections on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 13th day of May 2010.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2010–11797 Filed 5–17–10; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034; Docket 2010–0083; Sequence 26]

Federal Acquisition Regulation; Submission for OMB Review; Examination of Records by Comptroller General and Contract Audit

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the examination of records by comptroller general and contract audit. A request for public comments was published in the **Federal Register** at 75 FR 10268, on March 5, 2010. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 17, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0034 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0034" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0034". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0034" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. *Attn:* Hada Flowers/IC 9000–0034.

Instructions: Please submit comments only and cite Information Collection 9000–0034, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Contract Policy Branch, GSA, (202) 208–4949 or e-mail *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause, 52.212–5(d); and Audit and Records—Sealed Bidding clause, 52.214–26, implement the requirements of 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306. The statutory requirements are that the Comptroller General and/or agency shall have access to, and the right to, examine certain books, documents and records of the contractor for a period of 3 years after final payment. The record retention periods required of the contractor in the clauses are for compliance with the aforementioned statutory requirements. The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed.

B. Annual Reporting Burden

Respondents: 19,142.
Responses per Respondent: 20.
Total Responses: 382,840.
Hours per Response: 0.167.
Total Burden Hours: 63,934.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0034, Examination of Records by Comptroller General and Contract Audit, in all correspondence.

Dated: May 10, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–11865 Filed 5–17–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090; Docket 2010–0083; Sequence 16]

Federal Acquisition Regulation; Submission for OMB Review; Rights in Data and Copyrights

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning rights in data and copyrights. A notice published in the **Federal Register** at 75 FR 13764, on March 23, 2010. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 17, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0090 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting

"Information Collection 9000–0090" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0090". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0090" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0090.

Instructions: Please submit comments only and cite Information Collection 9000–0090, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, GSA (202) 501–3775 or email *ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Subpart 27.4, Rights in Data and Copyrights is a regulation which concerns the rights of the Government and contractors with whom the Government contracts, regarding the use, reproduction, and disclosure of information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories:

(a) A provision which is to be included in solicitations where the offeror would identify any proprietary data it would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluating work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts should require this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data—General clause (52.227.14) outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there may rarely be any challenges. Thus, there is no burden on the public.

B. Annual Reporting Burden

Respondents: 1,100.
Responses per Respondent: 1.
Annual Responses: 1,100.
Hours per Response: .95.
Total Burden Hours: 1,045.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows:

Recordkeepers: 9,000.

Hours per Recordkeeper: 2.

Total Recordkeeping Burden Hours: 18,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: May 7, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–11870 Filed 5–17–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Mound Site in Miamisburg, OH, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Mound site in Miamisburg, Ohio, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Mound site.

Location: Miamisburg, Ohio.

Job Titles and/or Job Duties: All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked in the R and SW Buildings.

Period of Employment: March 1, 1959 through March 5, 1980.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can

also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–11875 Filed 5–17–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the decision to designate a class of employees from Lawrence Livermore National Laboratory in Livermore, California, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 5, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Lawrence Livermore National Laboratory in Livermore, California from January 1, 1950 through December 31, 1973, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on May 5, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on May 5, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–11881 Filed 5–17–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the decision to designate a class of employees from Westinghouse Electric Corp., Bloomfield, New Jersey, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 5, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at Westinghouse Electric Corp., Bloomfield, New Jersey, from August 13, 1942 through December 31, 1949, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on May 5, 2010, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on May 5, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–11882 Filed 5–17–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the decision to designate a class of employees from the Nevada Test Site as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 5, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the Nevada Test Site, from January 1, 1963 through December 31, 1992, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation became effective on May 5, 2010, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on May 5, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–11880 Filed 5–17–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the decision to designate a class of employees at the Lawrence Berkeley National Laboratory in Berkeley, California, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 5, 2010,

as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Lawrence Berkeley National Laboratory in Berkeley, California, from August 13, 1942 through December 31, 1961, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on May 5, 2010, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on May 5, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–11874 Filed 5–17–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the decision to designate a class of employees from Area IV of the Santa Susana Field Laboratory as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 5, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked in any area of Area IV of the Santa Susana Field Laboratory from January 1, 1959 through December 31, 1964, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on May 5, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on May 5, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–11878 Filed 5–17–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10088 and CMS–10028]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notification of Fiscal Intermediaries and CMS of co-located Medicare providers and Supporting Regulations in 42 CFR 412.22 and 412.533; *Use:* Many long-term care hospitals (LTCHs) are co-located with other Medicare providers (acute care hospitals, Independent Rehabilitation Facilities (IRFs), Skilled Nursing Facilities (SNFs), psychiatric facilities), which leads to potential gaming of the Medicare system based on patient shifting. CMS is requiring LTCHs to notify fiscal intermediaries K (FIs), Medicare Administrative Contractors (MACs) and CMS of co-located providers and establish policies to limit payment abuse that will be based on FIs tracking patient movement among these co-located providers. *Form Number:* CMS–10088 (OMB#: 0938–0897); *Frequency:* Occasionally; *Affected Public:* Private Sector, Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 25; *Total Annual Responses:* 25; *Total Annual Hours:* 6.25. (For policy questions regarding this collection contact Judith Richter at 410–786–2590. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* State Health Insurance Assistance Program (SHIP) Client Contact Form, Public and Media Form, and Resource Report Form; *Form Number:* CMS–10028 (OMB#: 0938–0850); *Use:* The current Client Contact form, Public and Media Activity Report form, and Resource Report have been used to collect data to evaluate program effectiveness and improvement. In addition, the 2007–2009 State Health Insurance Program (SHIP) Performance Assessment Workgroup (comprised of SHIP Directors and representatives from external organizations such as the Administration on Aging), in a report to CMS, recommended that changes be made to the forms in order to enhance the ability to measure performance and program evaluation for each SHIP; add additional data collection elements as requested by Congress and SHIPs (Limited English Proficiency and Dual Mentally Disabled); and reduce the burden of data submission by counselor as a result of the ability to pre-populate certain data cells. The information collected is used to fulfill the reporting requirements described in Section 4360(f) of OBRA 1990. Also, the data will be accumulated and analyzed to measure SHIP performance in order to

determine whether and to what extent the SHIPs have met the goals of improved CMS customer service to beneficiaries and better understanding by beneficiaries of their health insurance options. Further, the information will be used in the administration of the grants, to measure performance and appropriate use of the funds by the state grantees, to identify gaps in services and technical support needed by SHIPs, and to identify and share best practices. *Frequency:* Yearly; *Affected Public:* State, Tribal and Local governments; *Number of Respondents:* 20,778; *Total Annual Responses:* 1,672,454; *Total Annual Hours:* 139,475. (For policy questions regarding this collection contact Barbara Childers at 410–786–7610. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *June 17, 2010:* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–11776 Filed 5–17–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

HRSA Telehealth Outcome Measures (OMB No. 0915–0311)—Extension

In order to help carry out its mission, the Office for the Advancement of Telehealth (OAT) created a set of performance measures that grantees can use to evaluate the effectiveness of their services programs and monitor their progress through the use of performance reporting data. As required by the Government Performance and Review Act of 1993 (GPRA), all federal agencies must develop strategic plans describing their overall goal and objectives. The Office for the Advancement of Telehealth (OAT) has worked with its grantees to develop performance measures to be used to evaluate and monitor the progress of the grantees. Grantee goals are to: Improve access to needed services; reduce rural practitioner isolation; improve health system productivity and efficiency; and improve patient outcomes. In each of these categories, specific indicators were designed to be reported through a performance monitoring Web site.

The Program Assessment Response Tool (PART) is the instrument created for use by Federal agencies. The Office of Management and Budget (OMB) uses the PART to assess Federal programs. The PART is a series of diagnostic questions used to assess and evaluate programs across a set of performance-related criteria, including program design and purpose, strategic planning, program management, and results. PART results are used to inform the budget process and improve program management. OAT's Telehealth Network Grant Program has been undergoing a PART assessment this year. Thus, in addition to responding to the GPRA initiative, OAT now has the added responsibility of responding to the PART assessment of its Telehealth Network Grant Program. The proposed performance measures will provide performance data that will address the PART assessment, monitor progress, and evaluate program effectiveness.

The estimates of burden are as follows:

Form	Number of respondents	Average number of responses per respondent	Total responses	Hours per response	Total burden hours
Performance Measurement Tool	667	2	1,334	7	9,338

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 12, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–11840 Filed 5–17–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Data Collection Tool for State Offices of Rural Health Grant Program

(OMB No. 0915–0322)—Extension

The mission of the Office of Rural Health Policy (ORHP) is to sustain and improve access to quality care services for rural communities. In its authorizing language (Sec. 711 of the Social Security Act [42 U.S.C. 912]), Congress charged ORHP with administering grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas.

In accordance with the Public Health Service Act, Section 338J; 42 U.S.C. 254r, the Health Resources and Services Administration proposes to revise the State Offices of Rural Health Grant Program—Guidance and Forms for the Application. The guidance is used annually by 50 States in writing applications for grants under the State Offices of Rural Health (SORH) Grant Program of the Public Health Service Act, and in preparing the required report.

ORHP seeks to expand the information gathered from grantees on their efforts to provide technical assistance to clients within their State. SORH grantees would be required to submit a Technical Assistance Report that includes: (1) The total number of technical assistance encounters provided directly by the Grantee; and, (2) the total number of unduplicated clients that received direct technical assistance from the grantee. Submission of the Technical Assistance Report would be done via e-mail to ORHP no later than 30 days after the end of each twelve month budget period.

The estimated average annual burden is as follows:

Form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Technical Assistance Report	50	1	12.5	625
Total	50			625

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: May 11, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–11835 Filed 5–17–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10171, CMS–460 and CMS–10318]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Coordination of Benefits between Part D Plans and Other Prescription Coverage Providers; *Use:* Section 1860D–23 and 1860D–24 of the Social Security Act requires the Secretary to establish requirements for prescription drug plans to ensure the effective coordination between Part D plans, State pharmaceutical Assistance programs and other payers. The requirements must relate to the following elements: (1) Enrollment file sharing; (2) claims processing and payment; (3) claims reconciliation reports; (4) application of the protections against high out-of-pocket expenditures by tracking True out-of-

pocket (TrOOP) expenditures; and (5) other processes that the Secretary determines. CMS, via the TrOOP facilitation contractor, automated the transfer of beneficiary coverage information when a beneficiary changes Part D plans. This information is necessary to assist with coordination of prescription drug benefits provided to the Medicare beneficiary. Refer to the crosswalk document for a list of the current changes. *Form Number:* CMS–10171 (OMB#: 0938–0978); *Frequency:* Yearly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 57,227; *Total Annual Responses:* 248,018; *Total Annual Hours:* 754,788 (For policy questions regarding this collection contact Christine Hinds at 410–786–4578. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Participating Physician or Supplier Agreement; *Form No.:* CMS–460 (OMB# 0938–0373); *Use:* The CMS–460 is the agreement a physician, supplier or their authorized official signs to participate in Medicare Part B. By signing the agreement to participate in Medicare, the physician, supplier or their authorized official agrees to accept the Medicare-determined payment for Medicare covered services as payment in full and to charge the Medicare Part B beneficiary no more than the applicable deductible or coinsurance for the covered services. For purposes of this explanation, the term a supplier means any person or entity that may bill Medicare for Part B services (*e.g.* DME supplier, nurse practitioner, supplier of diagnostic tests) except a Medicare provider of services (*e.g.* hospital), which must participate to be paid by Medicare for covered care.

There are additional benefits associated with payment for services paid under the Medicare fee schedule. Payments made under the Medicare fee schedule for physician services to participating physicians and suppliers are based on 100 percent of the Medicare fee schedule amount, while the Medicare fee schedule payment for physician services by nonparticipating physicians and suppliers is based on 95 percent of the fee schedule amount. Physicians and suppliers who do not participate in Medicare are subject to limits on their actual charges for unassigned claims for physician services. These limits, known as limiting charges, cannot exceed 115 percent of the non-participant fee schedule, which is set at 95 percent of the full fee schedule amount. In addition, if a physician or supplier does not accept assignment on a claim for Medicare payment, the physician or supplier must collect payment from the beneficiary. If the physician or supplier accepts assignment on the claim, Medicare pays its share of the payment directly to the physician or supplier, resulting in faster and more certain payment. *Frequency:* Reporting, Other—when starting a new business; *Affected Public:* Business or other for-profit; *Number of Respondents:* 8,000; *Total Annual Responses:* 8,000; *Total Annual Hours:* 2,000. (For policy questions regarding this collection contact April Billingsley at 410–786–0410. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Survey to Inform the Children's Health Insurance Program (CHIP) National Outreach & Education Campaign; *Form No.:* CMS–10318 (OMB# 0938–New); *Use:* The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA or Pub. L. 111–3) reauthorized the Children's Health Insurance Program (CHIP) through FY 2013. It will preserve coverage for the millions of children who rely on CHIP today and provide the resources for States to reach millions of additional uninsured children. This legislation will help ensure the health and well-being of our nation's children. To support this legislation and to help people who would benefit from CHIP make more informed decisions, CMS will be conducting outreach. The outreach will employ numerous communications channels to educate people who would benefit from CHIP concerning the program benefits, eligibility and enrollment requirements, utilization, and retention. As part of the outreach, CMS will seek to increase awareness, enrollment and retention in CHIP for the eligible audiences. The primary target audience for the outreach includes parents and guardians of potentially eligible children as well as pregnant women. Secondary audiences are information intermediaries including State, local, and tribal governments, educators (including non-parental caregivers), health care providers/social workers, national and local partners. The challenge is reaching the population segments that have access barriers to information including language, literacy, location, and culture to understand health insurance. To support the outreach and education, CMS needs to conduct survey research to be able to effectively reach the target audiences. *Frequency:* Reporting—Once; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,850; *Total Annual Responses:* 1,850; *Total Annual Hours:* 2,000. (For policy questions regarding this collection contact Barbara Allen at 410–786–6716. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *July 19, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–11774 Filed 5–17–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Form CB–496. Title IV–E Programs Quarterly Financial Report.

OMB No.: 0970–0205.

Description: Through FY 2008, only State agencies were responsible for administering the Foster Care and Adoption Assistance Programs under title IV–E of the Social Security Act. With the enactment of Public Law 110–351, the "Fostering Connections to Success and Increasing Adoptions Act

of 2008," title IV–E was expanded, effective with FY 2009, to include a third program, Guardianship Assistance, and was further expanded, effective with FY 2010, to include Tribes, tribal organizations and consortia as additional grantees.

Ultimately, the combined effect of these changes will be to significantly increase the number of grantees, the number of grant awards and the required amount of financial reporting. In recognition of these substantial program revisions and to accommodate these changes, the quarterly financial report has been revised, redesigned and re-designated as Form CB–496, the "Title IV–E Programs Quarterly Financial Report."

The Administration for Children and Families (ACF) provides Federal funding at the rate of 50 percent for most administrative and other related costs and at enhanced rates ranging from 55 to 75 percent for training costs as detailed in Federal statute and regulations. This form is submitted quarterly by each State and Tribe to estimate the funding needs for the upcoming fiscal quarter and to report expenditures for the fiscal quarter just ended. The information collected in this report is used by this agency to calculate quarterly Federal grant awards and to enable oversight of the financial management of the programs.

Comments concerning these revisions were received from both Federal and grantee staffs by the ACF Office of Grants Management, both directly and in response to an earlier **Federal Register** Notice (74 FR 22749, May 14, 2009) that provided many useful recommendations and suggestions, many of which were incorporated into the final draft product.

Respondents: State and Tribal title IV–E agencies administering the Foster Care, Adoption Assistance and Guardianship Assistance Programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form CB–496	62	4	17	4,216

Estimated Total Annual Burden Hours: 4,216

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: May 12, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–11814 Filed 5–17–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Application for the Pharmacology Research Associate Program

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of General Medical Sciences (NIGMS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Application for the Pharmacology Research Associate Program. *Type of Information Collection Request:* Extension of a currently approved collection, OMB No. 0925–0378, expiration date December 31, 2010. *Form Numbers:* NIH 2721–1, NIH 2721–2. *Need and Use of Information Collection:* The Pharmacology Research Associate (PRAT) Program will use the applicant and referee information to award opportunities for training and experience in laboratory or clinical investigation to individuals with a Ph.D. degree in pharmacology or a related science, M.D., or other professional degree through appointments as PRAT Fellows at the National Institutes of Health or the Food and Drug Administration. The goal of the program is to develop leaders in pharmacological research for key positions in academic, industrial, and Federal research laboratories. *Frequency of Response:* Once a year. *Affected Public:* Individuals or households; Businesses or other for-profit. *Type of Respondents:* Applicants and Referees.

The annual reporting burden is as follows:

Type and number of respondents	Estimated number of responses per respondent	Estimated total responses	Average burden hours per responses	Estimated total annual burden hours requested
Applicants, 25	1	25	8.00	200
Referees, 75	1	75	1.75	131.25

Total Number of Respondents: 100.
Total Number of Responses: 100.
Total Hours: 331.25.

The annualized cost to respondents is estimated at:

Applicants: $10,250.00.

Referees: $6,562.50.

There are no Capital Costs, Operating costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Liz Elliott, NIGMS, NIH, Natcher Building, Room 2AN–18H, 45 Center Drive, MSC 6200, Bethesda, MD 20892–6200, or call non-toll-free number 301–594–2755 or e-mail your request, including your address to: *elliotte@nigms.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 10, 2010.

Sally Lee,

Executive Officer, National Institute of General Medical Sciences, National Institutes of Health.

[FR Doc. 2010–11857 Filed 5–17–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0057]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on How to Submit Information in Electronic Format to the Center for Veterinary Medicine Using the FDA Electronic Submission Gateway

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 17, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0454. Also include the FDA docket number found in brackets in the heading of this document

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on How to Submit Information in Electronic Format to the Center for Veterinary Medicine Using the FDA Electronic Submission Gateway (OMB Control Number 0910–0454)—Extension

The Center for Veterinary Medicine (CVM), accepts certain types of submissions electronically with no requirement for a paper copy. These types of documents are listed in public docket 97S–0251 as required by 21 CFR 11.2. CVM's ability to receive and process information submitted electronically is limited by its current information technology capabilities and the requirements of the Electronic Records; Electronic Signatures final regulation. CVM's guidance entitled "Guidance for Industry: How to Submit Information in Electronic Format to CVM Using the FDA Electronic Submission Gateway" outlines general standards to be used for the submission of any information by e-mail. The likely respondents are sponsors for new animal drug applications.

In the **Federal Register** of February 5, 2010 (75 FR 6038), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Form 3538	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Respondent	Total Hours
11.2	40	1.3	52	.08	4.2

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Electronic submissions received between January 1, 2008, and December 31, 2008.

The number of respondents in table 1 of this document is the number of sponsors registered to make electronic submissions (40). The number of total annual responses is based on a review of the actual number of such submissions made between January 1, 2008, and December 31, 2008 (52 x hours per response (.08) = 4.2 total hours).

Dated: May 12, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–11808 Filed 5–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0229]

Agency Information Collection Activities; Proposed Collection; Comment Request; Invitation to Manufacturers and Distributors to Voluntarily Submit Final Product Labeling and Information Electronically for all Devices Cleared by the Food and Drug Administration for Home Use; Notice of Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments regarding the request that manufacturers and distributors of all devices cleared by FDA for home use voluntarily submit final product labeling and information electronically as a part of a pilot program to be conducted by FDA's Center for Devices and Radiological Health (CDRH). FDA is requesting that manufacturers and distributors for these products submit final product labeling and information in a standard Structured Product Labeling (SPL) format that we intend to eventually place on a home use device product portal that will be accessible to the public.

DATES: Submit written or electronic comments on the collection of information by July 19, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44.U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Invitation to Manufacturers and Distributors of Devices Cleared by FDA for Home Use to Voluntarily Submit Final Product Labeling and Information Electronically (OMB Control Number 0910—New)

For purposes of this pilot program, FDA generally considers a home use device to be a medical device intended for users in a non-clinical environment that is managed partly or wholly by the user, where the device may require adequate labeling for home use and may require training by a licensed heath care provider in order to be used safely and effectively.

In June 2001, FDA created the Center for Devices and Radiological Health (CDRH) Home Health Care Committee (HHCC) to review CDRH's involvement in addressing problems that arise when devices are used in the home environment. After meeting with various stakeholders, the HHCC agreed with the stakeholders' recommendation that promoting the safe use of medical devices presented a significant health challenge for which the HHCC could focus CDRH's educational outreach efforts. As a result, FDA is seeking manufacturers and distributors of devices cleared for home use to voluntarily participate in a pilot program involving the submission of final product labeling and additional product information electronically.

Section 510(j)(1)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(j)(1)(B)(i)), requires persons who register and list a restricted device to provide, among other things, a copy of all labeling to FDA. Section 510(j)(1)(B)(ii) of the act requires persons who register and list a device that is not restricted to provide the label and package insert and a representative sampling of any other labeling to FDA. For this pilot program, we are requesting manufacturers and distributors of medical devices cleared for home use to electronically submit final product labeling as well as the following information, if not included in product labeling:

Device Product Information
- Proprietary name
- Descriptive name
- Model or catalog number
- FDA listing number

Manufacturer Information
- Manufacturer name
- Manufacturer address
- Manufacturer 800 number
- Manufacturer Web site

Distributor Information
- Distributor name
- Distributor address
- Distributor 800 number
- Distributor Web site

Characteristics
- Allergens
- Single use or reusable
- Sterile
- Storage temperature
- Storage humidity
- Size
- Storage environment
- Picture of device
- MRI compatible

Marketing Information
- Status
- Prescription or OTC

Components and Accessories
- Components needed to operate the device
- Accessories compatible with the device
- Pictures of components and compatible accessories

Directions for Use
- Intended use of the device
- Indications for use
- Route, method, and frequency of administration

Summary of safety and effectiveness
Assembly or installation instructions
Calibration instructions
Instructions for use for the layperson
Warnings
Precautions
Contraindications
Side effects
Cleaning, disinfecting, and sterilization instructions
Safety information
In Vitro Diagnostic Devices
Test code
Value range
Special information for this test

If this information is not a part of your current final product labeling or information, FDA is requesting that you submit the information as a part of this pilot program. The purpose of the pilot program is twofold. First the pilot program will enable regulated industry to provide feedback that will assist FDA in developing guidance for industry on the electronic submission and availability of final labeling and product information for devices cleared for home use. Second, the pilot program will enable the public and regulated industry to view the information and instructions for use for such devices as a part of CDRH's planned medical device portal for devices cleared for home use. It is our expectation that the portal, established as a part of this pilot program, will increase the likelihood that users—home health nurses, patients, and caregivers—will have continuous access to home use labeling information and instructions for use to help ensure the safe and effective use of devices cleared for home use. In order for manufacturers and distributors to submit final labeling and product information they will need to do so in the SPL format. To create an SPL file and submit it to FDA, a respondent would need the following tools: A computer, appropriate software, access to the Internet, knowledge of terminology and standards, and access to FDA's Electronic Submissions Gateway (ESG) (*http://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/default.htm*). The ESG is an agency-wide means for accepting electronic regulatory submissions. The FDA ESG enables the secure submission of regulatory submissions. Instructions and information regarding the creation of an SPL file can be found at *http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/default.htm*. Most respondents have computers and Internet access available for their use. If a business does not have an available computer or access to the Internet, free use of computers and the Internet are usually available at public facilities, e.g. a community library. In addition there should be no additional cost associated with obtaining the software. In 2008, FDA collaborated with GlobalSubmit (*http://globalsubmit.com/home/Home/tabid/37/Default.aspx)* to make available free SPL authoring software that SPL authors may utilize to create new SPL documents or edit previous versions. After the SPL is created, the respondent would upload the file through the ESG. The Internet portal can be found at *http://www.fda.gov/downloads/ForIndustry/FDAeSubmitter/UCM162419.pdf*. Prior to uploading an SPL file, one must obtain a digital certificate. Instructions regarding obtaining a digital certificate used with FDA's ESG and uploading the SPL file for submission can be found at *www.fda.gov/esg/default.htm*. The digital certificate binds together the owner's name and a pair of electronic keys (a public and a private key) that can be used to encrypt and sign documents. A fee of up to approximately $20.00 is charged for the digital certificate. FDA is not calculating this small fee as cost of this information collection because manufacturers and distributors will have already secured a digital certificate as they are required to do so when they register and list.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Respondents	Hours per Response	Total Hours
Collecting Final Labeling and Product Information	200	3	600	2	1,200
Conversion of Word or PDF Final Labeling and Product Information into SPL	200	3	600	2	1,200
Submission of SPL into ESG	200	3	600	1	600
Total					3,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that the collection of final product labeling will take 1 hour per response. FDA estimates that the submission of final product information will also take 1 hour per response. The agency estimates that approximately 200 respondents will submit their device labeling and product information 3 times annually. The agency estimates that it will take respondents 2 hours to convert their word or PDF labeling and product information into an SPL format using SPL authoring software. The main task involved in this conversion is copying the content from one document (Word or PDF) to another (SPL). SPL authors may copy a paragraph from a Word or PDF document and paste the text into the appropriate section of an SPL document. In instances where an SPL author needs to create a table, the table text may be copied from Word or PDF document and pasted into each table cell in the SPL document. Conversion software vendors have designed tools that will import the Word or PDF version of the final labeling and product information, and within minutes, automatically generate the SPL documents. Once the document is in the SPL format device manufacturers can then submit their product labeling through FDA's ESG. The agency estimates the burden associated with entering the SPL labeling and product information into the ESG is 1 hour per response. The agency based its estimates on the number of premarket submissions cleared by FDA for home use from 1976 to the present as well as experience with the electronic submission process of registration and listing data elements.

Dated: May 12, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–11810 Filed 5–17–10; 8:45 am]

BILLING CODE 4160–01–S

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; Member Conflict: Imaging and Radiation Therapy.
Date: June 8, 2010.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Syed M. Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Vector Biology Study Section.
Date: June 9–10, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monticello, 1075 Thomas Jefferson Street, NW., Washington, DC 20007.
Contact Person: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.
Date: June 9–10, 2010.
Time: 8:30 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Lynn E. Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: Somatosensory and Chemosensory Systems Competitive Revisions.
Date: June 9, 2010.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: M. Catherine Bennett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Chemo/Dietary Prevention Study Section.
Date: June 10–11, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Sally A Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 408–9724, *mulherns@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.
Date: June 10–11, 2010.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Cell Death in Neurodegeneration Study Section.
Date: June 10–11, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Washington DC, 1250 22nd Street, NW., Washington, DC 20037.
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*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.
Date: June 10, 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: Michael Knecht, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.
Date: June 10–11, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: John Burch, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.
Date: June 10–11, 2010.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Guest Suites, 1707 Fourth Street, Santa Monica, CA 90401.
Contact Person: Heidi B. Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.
Date: June 10–11, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Joanna M. Pyper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Neurotechnology Study Section.
Date: June 10, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Washington DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mechanisms of Psychiatric Disorders.

Date: June 10–11, 2010.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Computational Data Management and Analysis.

Date: June 10–11, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: June 10, 2010.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: David R. Jollie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301)-435–1722, *jollieda@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: June 10–11, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: William A. Greenberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Intercellular Interactions Study Section.

Date: June 10–11, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: June 10–11, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Maqsood A Wani, PhD, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: June 10, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: June 10–11, 2010.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Peter B Guthrie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Developmental Therapeutics Study Section.

Date: June 10–11, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: June 10–11, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Marina del Rey, 4100 Admiralty Way, Marina del Rey, CA 90292.

Contact Person: Tina McIntyre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: June 10–11, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroimmunology and Brain Tumors Study Section.

Date: June 10–11, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington DC Downtown, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11861 Filed 5–17–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.
Date: June 10–11, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20095.
Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@mail.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies Study Section.
Date: June 10, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaylord National Hotel & Convention Center, 201 Waterfront Street, National Harbor, MD 20745.
Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.
Date: June 10–11, 2010.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Bacterial Pathogenesis.
Date: June 10–11, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Rolf Menzel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Methodology and Measurement in the Behavioral and Social Sciences.
Date: June 10–11, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Washington DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Macromolecular Structure and Function C.
Date: June 10–11, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.
Date: June 10–11, 2010.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654.
Contact Person: Deborah L Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.
Date: June 10, 2010.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: The Hotel George, 15 E Street, NW., Washington, DC 20001.
Contact Person: Geoffrey G Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.
Date: June 10, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Dan D Gerendasy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.
Date: June 10–11, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Denise R Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.
Date: June 10–11, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: David J. Remondini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301–435–1038, *remondid@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—A Study Section.
Date: June 10–11, 2010.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Baltimore BWI Airport, 1739 West Nursery Road, Linthicum Heights, MD 21090.
Contact Person: Calbert A Laing, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Enabling Bioanalytical and Biophysical Technologies Study Section.
Date: June 10–11, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Vonda K Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: June 10–11, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Guangyong Ji, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.
Date: June 10–11, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Robert Freund, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cardiovascular and Sleep Epidemiology Study Section.
Date: June 10–11, 2010.
Time: 8:30 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.
Contact Person: J. Scott Osborne, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA Revisions for SSPS.
Date: June 10, 2010.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaylord National Hotel & Convention Center, 201 Waterfront Street, National Harbor, MD 20745.
Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.
Date: June 10, 2010.
Time: 11 a.m. to 12 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: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurotechnology-3.
Date: June 10, 2010.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Washington DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Myeloid Cell Development and Immunoglobulin Repertoire.
Date: June 10, 2010.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Bahiru Gametchu, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1225, *gametchb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Analytical Chemistry Reviews.
Date: June 10, 2010.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: John L. Bowers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11859 Filed 5–17–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 National Advisory Child Health and Human Development 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/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 Advisory Child Health and Human Development Council.
Date: June 3, 2010.
Open: 8 a.m. to 12:20 p.m.
Agenda: (1) A report by the Acting Director, NICHD; (2) National Center for Medical Rehabilitation Research Presentation; (3) a discussion on the planning of the NICHD Science Vision; and other business of the Council.
Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.
Closed: 12:20 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.
Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496–1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance

onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

In order to facilitate public attendance at the open session of Council, reserve seating will be made available to the first five individuals reserving seats in the main meeting room, Conference Room 6. Please contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation. Additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: *http://wwwauthor.nichd.nih.gov/about/overview/advisory/nachhd/virtual-meeting-201005.cfm.* The meeting is partially closed to the public.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS)

Dated: May 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11848 Filed 5–17–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 10, 2010, 1 p.m. to 5:30 p.m. EDT; June 11, 2010, 9 a.m. to 12:30 p.m. EDT.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, June 10 from 1 pm to 5:30 pm (EDT) and Friday, June 11 from 9 a.m. to 12:30 p.m. (EDT). The public can join the meeting via audio conference call by dialing 1–888–849–8919 on June 10 & 11 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the December meeting will include, but are not limited to: updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice, National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics, Evaluation and Research (Food and Drug Administration). Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *aherzog@hrsa.gov*. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *aherzog@hrsa.gov*.

Dated: May 11, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–11837 Filed 5–17–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): Prevention of Suicidal Behavior through the Enhancement of Connectedness (U01), Request for Applications (RFA) CE10–006, initial review.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the aforementioned meeting:

Times and Date: 11:30 a.m.–6:30 p.m., June 17, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Prevention of Suicidal Behavior through the Enhancement of Connectedness (U01), RFA CE10–006".

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jane Suen, Dr.P.H., M.S., National Center for Injury Prevention and Control, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop F–63, Atlanta, Georgia 30341, Telephone (770) 488–4281.

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: May 11, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–11887 Filed 5–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Evaluation of Offering and Documenting Influenza Vaccination for Nursing Home Residents, Funding Opportunity Announcement (FOA) IP10–001; Development, Implementation, and Evaluation of a Multi-Component Intervention to Vaccinate Adolescents at Risk for Vaccine-Preventable Diseases, FOA IP10–002; Evaluation and Impact of a State Law Requiring Mandatory Influenza Vaccination of Hospital Employees, FOA IP10–003; and Improving the Translation of the

Evidence-Based Recommendation of Client Reminder/Recall for Childhood Immunization, FOA IP10–004, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., June 7, 2010 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, Telephone: (770) 979–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Evaluation of Offering and Documenting Influenza Vaccination for Nursing Home Residents, FOA IP10–001; Development, Implementation, and Evaluation of a Multi-Component Intervention to Vaccinate Adolescents at Risk for Vaccine-Preventable Diseases, FOA IP10–002; Evaluation and Impact of a State Law Requiring Mandatory Influenza Vaccination of Hospital Employees, FOA IP10–003; and Improving the Translation of the Evidence-Based Recommendation of Client Reminder/Recall for Childhood Immunization, FOA IP10–004".

For More Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2293.

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: May 11, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–11886 Filed 5–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Commodity-Based Clustered Storage Units

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain Commodity-based Clustered Storage Units. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of Commodity-based Clustered Storage Units for purposes of U.S. government procurement.

DATES: The final determination was issued on May 11, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alison Umberger, Valuation and Special Programs Branch: (202) 325–0267.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 11, 2010, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of Commodity-based Clustered Storage Units which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H082476, was issued at the request of Scale Computing under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the Commodity-based Clustered Storage Units, assembled in the United States from parts made in China, Taiwan, India, Thailand, and Malaysia, and programmed in the United States using software developed in the United States, is substantially transformed in the United States, such that the United States is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 11, 2010.

William G. Rosoff,

Acting Executive Director, Regulations and Rulings.

Office of International Trade

Attachment

HQ H082476

May 11, 2010

OT:RR:CTF:VS H082476 ARU

CATEGORY: Marking

Mr. Joshua Holzer
Wilson, Sonsini, Goodrich & Rosati
1700 K Street, NW, Fifth Floor
Washington, DC 20006–3817

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; ICS Units

Dear Mr. Holzer:

This is in response to your request dated October 15, 2009, made on behalf of Scale Computing ("Scale"). You ask for a country of origin marking decision and final determination relating to government procurement pursuant to subpart B of Part 177, Customs and Border Protection ("CBP") Regulations (19 C.F.R. § 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Scale's SN1000, SN2000, and SN4000 Commodity-based Clustered Storage ("ICS") Units. We note that Scale is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Scale Computing produces storage appliances that offer a multi-protocol, multi-density suite of non-controller-based, unified NAS/SAN, enterprise-class storage solutions. Scale's SN1000, SN2000, and SN4000 ICS Units are mass data storage devices similar in function to Storage Area Network ("SAN") or Network Attached Storage ("NAS") devices (i.e., special-purpose networks that interconnect different kinds of data storage devices—such as tape libraries and disk arrays—with associated data servers on behalf of a larger network of

users).[1] Their software architecture uses both proprietary and licensed technologies to create a grid storage system from multiple clustered "nodes" (small, commodity-based hardware devices).[2] The models at issue differ only in their storage capacity; the SN1000 holds 1 Terabyte worth of data, the SN2000 holds 2 Terabytes, and the SN4000 holds 4 Terabytes.

The ICS Units consist of the following components:

A. Hardware

1. A Central Processing Unit ("CPU"), which is used to provide the computing power;
2. An Application Specific Integrated Circuit ("ASIC") that provides the proper processing speeds;
3. A capacitor and resistors;
4. Electrically erasable programmable read-only memory ("EEPROM") to retain data in the event of power loss;
5. A "motherboard", which is a printed circuit board populated by transistors, diodes, capacitors, and communication board;
6. Additional motherboard components that provide additional data throughput;
7. A Western Digital brand Hard Disk Drive ("HDD") that stores data;
8. A memory module, which enhances overall throughput;
9. An air shroud, which helps with system cooling;
10. A heat sink that protects internal components from heat;
11. Two five foot patch cables, which connect to backplane for communication; and
12. A chassis that encloses all of the above listed components.

The components listed above are manufactured in several countries including China, India, Malaysia, Taiwan, and Thailand. (Significantly, the motherboard, which is the most expensive hardware component, is manufactured in China.) They are assembled in the U.S. upon importation "through a build and verification process that includes approximately 112 steps [summarized below]."

B. Software

The ICS Units also contain proprietary application software and firmware.[3] Together, they enable the ICS Units to (1) create a cluster of nodes which act in unison, and (2) independently control the entire cluster.[4]

The application software and the firmware were developed in the U.S. by Scale. You indicated that the development process entailed: (1) a requirements analysis; (2) product design; (3) code writing; (4) quality assurance testing; (5) bug fixing and maintenance; and (5) support. By your estimation, "at least 12,480 hours were invested in the development of the firmware and application software in question" with "at least 10,400 more hours invested each year in continued development and maintenance."

C. Assembly

The ICS Units are made from components manufactured in China, India, Malaysia, Taiwan, and Thailand. They are ultimately assembled in the U.S., according to the following process:

1. *Initial Quality Control:* personnel take component inventory and visually inspect each component. Serial numbers from each component are scanned into inventory and grouped with a particular ICS Unit. Serial numbers are verified for compatibility with other components in the group.
2. *Preparation of the System Chassis:* after clearing the system board area, the motherboard is secured to the chassis.
3. *The Serial Advanced Technology Attachment ("SATA") backplane cabling is attached:* after lining up the appropriate markings, the SATA cable is connected to the SATA Backplane by using a SATA cable tree.
4. *The molex connector and intrusion detectors are attached to the SATA backplane.*
5. *Preparation of the system board:* The CPU, CPU Cooler, and Random Access Memory ("RAM") are attached to the system board.
6. *Integration of the system board:* the system board is integrated into the chassis by aligning it with the mounting holes and ensuring proper alignment with the I/O shield. The system board, main power harness, and power connector are then secured to the chassis. The main power harness is attached to the system board.
7. *Fan kit assembly:* Fan connectors are plugged into internal ports.
8. *Routing and bundling of the front panel connectors:* Front panel connectors are appropriately routed and connected.
9. *Air shroud integration:* air shroud is positioned and attached to power cable.
10. *Signal Cables:* signal cables are connected to the system board in the appropriate order, from SATA 0 through SATA 3.
11. *Verify and ensure the cable routing and connections:* the intrusion detection cable is bundled and secured, and the "Chassis Intrusion" is attached next to the SATA connectors.
12. *Hard drive Integration:* hard drive fillers are removed from chassis.
13. *Install hard drives (parts from Bill of Materials) and secure:* the capacity of all hard drives is verified to ensure they are either 500 GB or 1000 GB. The hard drives are the systematically distributed on all order systems.
14. *Verify hardware integration:* the hardware is verified to ensure that the system boards with CPU, Heat sink, and RAM has been properly mounted; the heat sink has proper orientation and is properly mounted; the cable routing and connections are correctly implemented; the air-duct (black shroud) is properly attached to the system board; the hard drives are properly assembled in carrier and lock in place; and that the Intrusion Detection Switch and Connector has been properly integrated.
15. *Secure chassis:* the lid of chassis is secured with screws.
16. *First power on:* the system is connected to a power source. The Network Interface Card ("NIC") is connected to the "Staging Services". The keyboard and mouse are plugged in. The power system is turned and checked for any abnormalities. The boot process is checked. The POST of system is tested to verify that there are no acoustical warnings.
17. *BIOS Configuration:* each system is booted into BIOS and all of the BIOS variables are reset to their defaults. The BIOS is then customized to run Scale's firmware and application software by adjusting fifteen separate settings.
18. *Diagnostic Testing:* after the system is rebooted, a technician performs a general diagnostic test and reboots again.
19. *Scale Image Loading:* on this reboot, a technician connects the ICS Unit to power and checks that the system's configuration is correct. After connecting the ICS Unit to a network, the technician loads the Company's proprietary Operating System ("OS") application software image, which enables the ICS Unit to act as part of a Scale system. The technician must observe the entire load process to ensure

[1] *See* Newton's Telecom Dictionary (23rd Ed., 2007).

[2] Each node contains a number of physical hard disk drives. It is the underlying software technology, rather than the proprietary hardware and controllers, which manages the distribution of data across both individual drives and across nodes in the grid. *See* ICS White Paper 2009, available at *www.scalecomputing.com*.

[3] "Firmware" is a category of memory chips that hold their content without electrical power and include ROM, PROM, EPROM, and EEPROM technologies. Firmware becomes "hard software" when holding program code. *See* Alan Freedman's *The Computer Glossary* (9th Ed., 2001).

[4] You claim that, without the software, the ICS Units would behave like a standard, off-the-shelf rack storage unit.

that the ICS Unit is properly configured and accepts the OS load.

20. *Verification:* the technician now runs an MD5 Check-Sum program to confirm that the OS image on the ICS Unit is identical to Scale's proprietary OS image.

21. *Complete Integration and Verify:* the technician now reboots the ICS Unit again to verify the BIOS settings are correctly implemented. The ICS Unit is then shut down.

It takes approximately one hour to assemble each ICS Unit.

ISSUE:

What is the country of origin of the ICU Units for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended ("TAA"; 19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth at 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1).

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

In *Data General v. United States,* 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States, the programming of a foreign PROM (Programmable Read-Only Memory chip) substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function. That is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a project engineer with many years of experience in "designing and building hardware." While replicating the program pattern from a "master" PROM may be a quick one-step process, the development of the pattern and the production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programming alters the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device possessing a desired distinctive circuit pattern was no less a "substantial transformation" than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments v. United States, supra,* the court observed that the substantial transformation issue is a "mixed question of technology and customs law."

In C.S.D. 84–86, CBP stated:

We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming . . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. *See also* HQ 733085, dated July 13, 1990; and HQ 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions on it that allows it to perform certain functions of preventing piracy of software constituted substantial transformation); *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette did not constitute substantial transformation because it did not add value, did not involve complex or highly technical operations and did not create a new or different product); HQ 734518, dated June 28, 1993 (concluding that motherboards were not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imports it).

You claim that Scale takes several individual components and combines them in the United States to make otherwise dormant electronic components into a usable customized data storage device. The motherboard is imported from China with integrated circuits, an EEPROM, transistors, diodes, a capacitor, resistors and communication buses. From the information provided, the board is solely or principally used with an ADP storage unit. Once imported, the motherboard will be installed in a chassis from China, along with various other non-originating components including a CPU from Malaysia, HDD from Thailand, memory module, air shroud, cables, and heat sink from

China, to complete a rack mounted server. Each of these components is made into a rack mounted storage device, classifiable under 8471.70.40, Harmonized Tariff Schedule ("HTSUS").

The device does not have pairing capability until the U.S.-made software is downloaded to it, which enables the device to function as a cloud computing device similar to a network storage RAID array (HDDs strung together to allow redundancy in different locations). The software completes a network storage function instead of just a HDD found in a rack mounted storage device. The RAID array storage subsystem components and HDD canisters usually include a disk array controller frame which effects the interface between the subsystem's storage units and a CPU. In this case, the software effects the interconnection between the CPU and the storage units, and the classification of the finished item becomes 8471.80.10, HTSUS. Thus, the imported components become a new product with a new name and classification.

In summary, Scale imports several components of foreign-origin, including a blank storage medium in the form of a hard disk drive, combines them into a finished product and loads propriety software using skilled technical effort. The customization and installation of firmware and application software make what would otherwise be a non-functioning rack storage unit, into Scale's proprietary clustered technology. As a result of the U.S. processing, we find that the imported component parts are substantially transformed and therefore, the country of origin of the ICS Units is the United States.

Please be advised, however, that whether the ICS Units may be marked "Made in the U.S.A." or with similar words, is an issue under the authority of the Federal Trade Commission ("FTC"). We suggest that you contact the FTC, Division of Enforcement, 6th and Pennsylvania Avenue, NW., Washington, DC 20508, on the propriety of markings indicating that articles are made in the United States.

HOLDING:

Based on the facts provided, the processing operations performed in United States impart the essential character to the ICS Units. As such, the ICS Units will be considered products of the United States for the purpose of government procurement.

Notice of this final determination will be given in the Federal Register as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

William G. Rosoff
for
Sandra L. Bell, *Executive Director*
Regulations and Rulings
Office of International Trade

[FR Doc. 2010–11726 Filed 5–17–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5421–FA–01]

Announcement of Funding Awards for the Indian Community Development Block Grant Program for Fiscal Year 2009

AGENCY: Office of Native American Programs, Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2009 (FY 2009) Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of this year's award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the ICDBG Program awards, contact the Area Office of Native American Programs (ONAP) serving your area or Deborah M. Lalancette, Office of Native Programs, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone (303) 675–1600. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY 2009 awards announced in this Notice were selected for funding in a competition posted on HUD's Web site on May 29, 2009 (*http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/grants/fundsavail*). Applications were scored and selected for funding based on the selection criteria in that notice and Area ONAP geographic jurisdictional competitions.

The amount appropriated in FY 2009 to fund the ICDBG was $65,000,000. Of this amount $3,960,000 of this amount was retained to fund imminent threat grants in FY 2009. In addition, a total of $2,076,159 in carryover funds from prior years was also available. The allocations for the Area ONAP geographic jurisdictions, including carryover, are as follows:

Alaska	$6,859,040
Eastern/Woodlands	6,928,622
Northern Plains	9,194,667
Northwest	3,662,163
Southern Plains	13,734,388
Southwest	22,737,279
Total	$63,116,159

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 83 awards made under the various regional competitions in Appendix A to this document.

Dated: May 4, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A

Name of applicant	Amount funded	Activity funded	Project description
Alabama—Quassarte Tribal Town, Tarpie Yargee, Chief, P.O. Box 187, Wetumka, OK, (405) 452–3987.	$797,305	Public Facility—Community Center.	Construction of a senior center.
Apsaalooke (Crow) Nation, Cedric Black Eagle, Chairperson, P.O. Box 159, Crow Agency, MT 59022, (406) 638–3717.	1,100,000	Public Facility—Infrastructure	P3a wastewater collection system.
Bear River Band of Rohnerville, Rancheria, Leonard Bowman, Chairman, 27 Bear River Drive, Loleta, CA 95551, (707) 733–1900.	605,000	Housing—New Construction ..	Three units of single family homeownership.
Big Valley Tribe of Pomo Indians, Valentino Jack, Chairperson, 2726 Mission Rancheria Road, Lakeport, CA 95453, (707) 263–3924.	605,000	Public Facility—Infrastructure	Infrastructure for 11 housing units—new construction.
Cahuilla Band of Mission Indians, Luther Salgado, Chairperson, P.O. Box 391760, Anza, CA 92539, (909) 763–5549.	605,000	Housing—New Construction ..	Five units (either stick built or manufactured).
Chemehuevi Indian Tribe, Charles Wood, Chairperson, P.O. Box 1976, Havasu Lake, CA 92363, (760) 858–4219.	605,000	Public Facility—Infrastructure	Water and wastewater systems renovation.
Cherokee Nation, Chad Smith, Principal Chief, P.O. Box 948, Tahlequah, OK 74465, (918) 456–0671.	750,000	Public Facility—Community Center.	Nowata Food/Senior Nutrition Center.
Chickasaw Nation, Bill Anoatubby, Governor, P.O. Box 1548, Ada, OK 74821, (580) 436–2603.	800,000	Public Facility—Community Center.	Chickasaw Nation Head Start Expansion Project.
Chippewa-Cree Tribe of the Rocky Boy Reservation, Donna Sue Hay, Executive Director, RR1 Box 544, Box Elder, MT 59521, (406) 395–5705.	900,000	Housing Rehabilitation	At least 24 single family 3-bedroom units.
Choctaw Nation, Gregory E. Pyle, Chief, P.O. Drawer 1210, Durant, OK 74702, (580) 924–8280.	800,000	Economic Development	Construction of a new building to house an economic development project.
Cocopah Indian Tribe, Sherry Cordova, Chairperson, County 15, Avenue G, Somerton, AZ 85350, (928) 627–2514.	605,000	Housing Rehabilitation	17 units of housing rehabilitation.
Confederated Tribe of Coos, Lower Umpqua & Siuslow Indians, Francis Somday, Tribal Administrator, 1245 Fulton Ave, Coos Bay, OR 97420, 1–888–280–0726.	500,000	Other	Demolition of existing buildings at Coos Head Site.
Confederated Tribes of the Grand Ronde, Cheryl Kennedy, Tribal Chairperson, 9615 Grand Ronde, Grand Ronde, OR 97420, (503) 879–5211.	325,000	Public Facility—Community Center.	2890 sq. ft. library addition.
Cook Inlet Tribal Council, Inc., Gloria O'Neill, President, 3600 San Jeronimo Drive, Anchorage, AK 99508, (907) 793–3401.	90,000	Homeownership	Homebuyer assistance.
Delaware Tribe of Indians, Jerry Douglas, Chief, 170 N.E. Barbara Ave, Bartlesville, OK 74354, (918) 336–5272.	800,000	Public Facility—Community Center.	Addition to resource & education care center.
Eastern Band of Cherokee Indians of NC, Michelle Hicks, Principal Chief, P.O. Box 455, Cherokee, NC 28719, (828) 497–7002.	487,500	Public Facility—Special Needs.	Alzheimer's unit at Tsali Care Center.
Eastern Shawnee Tribe of OK, Glenna Wallace, Chief, P.O. Box 350, Seneca, MO 64865, (918) 666–2435.	800,000	Public Facility—Community Center.	Activity center with a gymnasium and classroom with computer labs.
Ely Shoshone Tribe, Alvin Marques, Chairperson, 16 Shoshone Circle, Ely, NV 89301, (775) 289–3013.	297,279	Housing Rehabilitation	Seven units of housing rehabilitation for the elderly using Energy Star appliances.
Gila River Health Care Corporation, Pam Thompson, Chief Operating Officer, PO Box 38, Sacaton, AZ 85247, (602) 528–1397.	2,750,000	Public Facility—Community Center.	Memorial—Hospital facility.
Grand Portage Reservation Tribal Council, Norman Deschampe, Chairperson, P.O. Box 428, Grand Portage, MN 55605, (218) 475–2277.	600,000	Public Facility—Infrastructure	Human Services Center rehabilitation.
Grand Traverse Band of Ottawa and Chippewa Indians, Jane A. Rohl, Tribal Manager, 2605 NW Bay Shore Drive, Suttons Bay, MI 49682, (213) 534–7136.	600,000	Public Facility—Community Center.	Medical Lodge renovations.
Hannahville Indian Community, Kenneth Meshigaud, Chairperson, N14911 Hannahville B1 Road, Wilson, MI 49896, (906) 466–2932.	550,500	Housing Rehabilitation	Housing rehabilitation.
Houlton Band of Maliseet Indians, Brenda Commander, Chief, 88 Bell Road, Littleton, ME 04730, (207) 532–4273.	600,000	Public Facility—Community Center.	Health clinic.
Hualapai Indian Tribe, Wilfred Whatoname, Sr., Chairman, P.O. Box 19, Peach Springs, AZ, (928) 769–2216.	825,000	Public Facility—Community Center.	Child care center.
Hughes Village, Wilmer Beetus, First Chief, P.O. Box 45029, Hughes, AK 99745, (907) 889–2239.	600,000	Housing—New Construction ..	Two single-family homes.
Igiugig Village, Dallia Andrew, President, P.O. Box 4008, Igugig, AK 99613, (907) 533–3211.	600,000	Public Facility—Special Needs.	Construction of a new health clinic.

APPENDIX A—Continued

Name of applicant	Amount funded	Activity funded	Project description
Keweenah Bay Indian Community, Susan LeFernier, Vice President, 107 Beartown Road, Baraga, MI 49908, (906) 353–4168.	600,000	Public Facility—Community Center.	Gas station-convenience store.
Kickapoo Tribe of OK, Marilyn Winsea, Chairwoman, P.O. Box 70, McLoud, OK 74851, (405) 964–2075.	779,700	Housing Rehabilitation	Kickapoo green rehabilitation housing project.
Klamath Indian Tribe, Joseph Kirk, Tribal Chairperson, P.O. Box 436, Chiloquin, OR 97624, (541) 783–2219.	500,000	Public Facility—Community Center.	Community center.
Lac du Flambeau Band of Chippewa, Dee Mayo for Carl Edwards, President, P.O. Box 67, Lac Du Flambeau, WI 54538, (715) 588–3303.	600,000	Public Facility—Community Center.	Dental clinic addition.
Lower Brule Sioux Tribe, Jeannie M. Smith, Executive Director, 187 Oyate Circle, Lower Brule, SD 57548, (605) 473–5561.	900,000	Housing—New Construction ..	Seven detached single family homes.
Lummi Nation Housing Authority, Jacqueline Ballew, LHA Chairperson, 2828 Kwina Road, Bellingham, WA 98226, (360) 312–8407.	500,000	Public Facility—Infrastructure	Roads and infrastructure for 14 unit subdivision.
Makah Tribe, Micah McCarty, Vice-Chairman, P.O. Box 115, Neah Bay, WA 98357, (360) 645–2201.	500,000	Housing Rehabilitation	Housing rehabilitation on 25–30 homes.
McGrath Native Village, Carolyn Vanderpool, 1st Chief, P.O. 134, McGrath, AK 99627, (907) 524–3024.	600,000	Public Facility—Infrastructure	McGrath multi-purpose community service center.
Mechoopda Tribe of Chico Rancheria, Dennis Ramirez, Chairperson, 125 Mission Ranch Boulevard, Chico, CA 95926, (530) 899–8922.	605,000	Housing—New Construction and Public Services.	Public service and new housing construction.
Mentasta Traditional Council, Nora David, President, P.O. Box 6019, Mentasta Lake, AK 99780, (907) 291–2319.	600,000	Housing—New Construction ..	Three single family homes.
Mescalero Apache Housing Authority, Alvin Benally, Executive Director, P.O. Box 227, Mescalero, NM 88340, (575) 464–4494.	825,000	Housing Rehabilitation	Housing rehabilitation.
Miami Tribe of OK, Tom Gamble, Chief, P.O. Box 1326, Miami, OK 74355, (918) 542–1445.	794,574	Public Facility—Community Center.	Dental and optometry health facility.
Modoc Tribe, Bill G. Follis, Chief, 515 G SE Street, Miami, OK 74354, (918) 542–1190.	787,286	Public Facility—Community Center.	Construction of the Northeastern Tribal Health System Health Programs Administration building.
Nambe Pueblo Housing Entity, Christine Brock, Executive Director, 11 W. Gutierrez, Box 3456, Santa Fe, NM 87506, (505) 455–0158.	605,000	Homeownership	Homeownership assistance to 12 tribal members.
Native Village of Ambler, Shield Downey, Jr., President, P.O. Box 47, Ambler, AK 99786, (907) 445–2196.	600,000	Housing Rehabilitation	Rehabilitation and weatherization.
Native Village of Buckland, Evans Thomas, Jr., President, P.O. Box 67, Buckland, AK 99727, (907) 494–2171.	600,000	Housing Rehabilitation	General rehabilitation and/or weatherization assistance.
Native Village of Kluti-Kaah, Carl Pete, President, P.O. Box 68, Copper Center, AK 99573, (907) 822–5541.	600,000	Housing—New Construction ..	Three single family homes.
Native Village of Perryville, Gerald Kosbruk, President, P.O. Box 89, Perryville, AK 99648, (907) 853–2230.	600,000	Housing—New Construction ..	Six single family homes.
Native Village of Port Graham, Patrick Norman, Ist Chief, P.O. Box 5510, Port Graham, AK 99603, (907) 284–2227.	600,000	Public Facility—Community Center.	Port Graham Behavioral Health and Community Support Service Center.
Navajo Nation, Joseph Shirley, Jr., President, P.O. Box 9000, Window Rock, AZ 86515, (928) 871–6352.	5,500,000	Public Facility—Infrastructure	#1—Tonalea Powerline Extension. #2—Kinilichee Powerline Extension. #3—LeChee Powerline Extension. #4—Rock Point Sub-Station Upgrade. #5—Chinle Powerline Extension. #6—Dennehotso Waterline Extension.
Northwestern Band of Shoshone Indians TDHE, Jon Warner, Executive Director, 707 N. Main Street, Brigham City, UT 84302, (435) 723–3013.	900,000	Housing—New Construction and Rehabilitation.	Construction of five new housing units, rehabilitation of at least two units.
Oglala Sioux (Lakota) Housing Authority, Doyle Pipe On Head, Assistant CEO, 400 East Highway 18, Pine Ridge, SD 57770, (605) 867–5161.	900,000	Housing Rehabilitation	78 basements and 136 bathrooms.
Ohkay Owingeh Housing Authority, Tomasita Duran, Executive Director, P.O. Box 1059, Ohkay Owingeh, NM 87566, (505) 852–0189.	605,000	Public Facility—Infrastructure	Gas and infrastructure.
Oneida Tribe of Wisconsin, Richard G. Hill, Chairman, PO Box 365, Oneida, WI 54155, (920) 869–2214.	600,000	Public Facility—Infrastructure	Smits Farms infrastructure.

APPENDIX A—Continued

Name of applicant	Amount funded	Activity funded	Project description
Organized Village of Saxman, Lee Wallace, President, Rt. 2 Box 2, Ketchikan, AK 99901, (907) 247–2502.	594,276	Public Facility—Special Needs.	Public facilities improvements project—senior center.
Ottawa Tribe, John Ballard, Chief, P.O. Box 110, Miami, OK 74355, (918) 540–1536.	794,878	Public Facility—Community Center.	Construction of the Northeastern Tribal Health System Diabetes Education and Physical Therapy Building.
Pascua Yaqui Tribe, Peter Yucupicio, Chairman, 7474 S. Camino de Oe, Tucson, AZ 85757, (520) 883–5000.	2,200,000	Public Facility—Community Center.	Diabetes Wellness Center.
Pawnee Nation, George Howell, President, P.O. Box 470, Pawnee, OK 74058, (918) 762–3621.	253,473	Public Facility—Community Center.	Early Childhood Development Center.
Penobscot Tribe of Maine, Kirk Francis, Chief, 12 Wabanaki Way, Indian Island, ME 04468, (207) 817–7349.	597,980	Homeownership	Homeowners Assistance.
Peoria Tribe of Indians of OK, John Froman, Chief, P.O. Box 1527, Miami, OK 74355, (918) 540–2535.	792,949	Public Facility—Community Center.	Construction of Community Health Services Facilities and Improvements.
Pueblo de Cochiti Housing Authority, Rick Tewa, Executive Director, P.O. Box 98, Cochiti Pueblo, 87072, (505) 465–0264.	605,000	Housing Rehabilitation	Twenty-two units of rehabilitation on the reservation.
Pueblo of Pojoaque, George Rivera, Governor, 78 Cities of Gold Road, Santa Fe, NM 87506, (505) 455–3334.	605,000	Public Facility—Community Center.	Public Facility—Community: Teen Wellness Center.
Quapaw Tribe, John Berrey, Chief, P.O. Box 765, Quapaw, OK 74363, (918) 542–1853.	794,793	Public Facility—Community Center.	Design and construction of a pharmacy & behavioral health facility.
Quinault Indian Nation, Fawn Sharp, Tribal Chairperson, 1214 Aalis Street, Taholah, WA 98587, (360) 276–8211.	356,000	Microenterprise	Establish CDFI to provide TA and loans to build and strengthen microenterprises on the Quinault Reservation.
San Felipe Pueblo Housing Authority, Isaac Perez, Executive Director, P.O. Box 4222, San Felipe Pueblo, NM 87000, (505) 771–9291.	825,000	Homeownership	Homeownership assistance to existing homeowners.
Santa Clara Pueblo Housing Authority, Francisco Simbana, Executive Director, 81 South Santa Road, Espanola, NM 87532, (505) 753–6170.	825,000	Housing Rehabilitation	Housing rehabilitation of traditional and older HUD homes throughout the reservation.
Shawnee Tribe, Ron Sparkman, Chairman, P.O. Box 189, Miami, OK 74355, (918) 542–2441.	800,000	Public Facility—Community Center.	Rehabilitation/construction of the Shawnee Tribe Social Service and Resource Center.
Shinnecock Indians Tribe of New York, Randy King, Chairman, P.O. Box 5006, Southhampton, NY 11968, (631) 283–6143.	600,000	Public Facility—Community Center.	Early Learning Day Care Center.
Shoalwater Bay Indian Tribe, Charlene Nelson, Tribal Chairperson, P.O. Box 130, Tokeland, WA 98590, (360) 267–6766.	481,163	Public Facility—Community Center.	Construct multi-purpose building.
Sisseton-Wahpeton Oyate, Michael Selvage, Chairperson, P.O. Box 509, Agency Village, SD 57262, (605) 698–3911.	729,667	Housing Rehabilitation	Thirty units of housing rehabilitation.
Sokoagon Chippewa Community, Arlyn Ackley, Chairperson, 3051 Sand Lake Road, Crandon, WI 54520, (715) 478–7500.	492,642	Public Facility—Infrastructure	Water/sewer extension.
Spokane Tribe, Gregory Abramson, Tribal Chairperson, P.O. Box 100, Wellpinit, WA 99040, (509) 458–6500.	500,000	Public Facility—Community Center.	Tribal Elder Service Center.
St. George Island, Mr. CH Merculief, President, P.O. Box 940, St. George Island, AK 99660, (907) 859–2205.	174,764	Housing Rehabilitation	St. George Housing Rehabilitation.
Taos Pueblo Housing, Daniel Suazo, Acting Executive Director, P.O. Box 2570, Taos, NM 87571, (575) 737–9704.	825,000	Housing Rehabilitation	Twenty-one units for the elderly.
Three Affiliated Tribes of the Fort Berthold Reservation, Marcus D. Levings, Chairperson, 404 Frontage Road, New Town, ND 58763, (701) 627–2600.	900,000	Public Facility—Community Center.	Parshall Community Multi-Purpose Senior and Wellness Center.
Tunica-Biloxi Tribe of LA, Earl Barbry, Sr., Chairman, P.O. Box 1589, Marksville, LA 71351, (318) 253–9767.	800,000	Public Facility—Community Center.	Tunica Biloxi Child Daycare Center.
Turtle Mountain Band of Chippewa, Richard Marcellais, P.O. Box 900, Belcourt, ND 58316.	1,100,000	Housing Rehabilitation	Rehabilitation of 26 units for low income households on the reservation.
United Keetoowah Band of Cherokee Indians, George Wickliffe, Chief, P.O. Box 747, Tahlequah, OK 74465, (918) 456–5126.	800,000	Economic Development	Construction of retail office complex.

APPENDIX A—Continued

Name of applicant	Amount funded	Activity funded	Project description
Utah Paiute Housing Authority, Jessie Laggis, Executive Director, 665 North, 100 East, Cedar City, UT, (435) 586–3751.	900,000	Housing Rehabilitation	Rehabilitation of 23 conveyed mutual housing units for low income, elderly, and disabled households.
Ute Mountain Ute Tribe, Ernest House, Sr., Tribal Chairperson, P.O. Box 248, Towaoc, CO 81334, (970) 565–3751.	900,000	Housing—New Construction ..	11,500 sq. foot foundation to house 10–12 two-bedroom & three-bedroom units.
Village of Sleetmute, Pete Mellick, President, P.O. Box 34, Sleetmute, AK 99668, (907) 449–4205.	600,000	Public Facility—Community Center.	Community center.
Wampanoag Tribe of Gay Head (Aquinnah) of MA, Cheryl Andrews-Maltais, Chairwoman, 20 Black Brook Road, Chilmark, MA 02535, (508) 645–9265.	600,000	Public Facility—Community center.	Community center.
Wells Indian Colony Band of Te-Moak Tribe, Paula Salazar, Chairperson, P.O. Box 809, Wells, NV 89835, (775) 752–3045.	605,000	Public Facility—Community Center.	Multi-purpose community center.
The Wyandotte Nation, Leaford Bearskin, Chief, 64700 E. Highway 60, Wyandotte, OK 74370, (918) 678–2297.	792,630	Public Facility—Infrastructure	Construction of a water system, storage well, well house, and access road.
Ysleta del Sur Pueblo, Frank Paiz, Governor, 119 S. Old Pueblo, El Paso, TX 79907, (915) 859–8053.	605,000	Housing Rehabilitation	78 units of housing rehabilitation.
Yurok Tribe, Maria Tripp, Chairperson, P.O. Box 1027, Klamath, CA 95548, (707) 482–1350.	605,000	Economic Development	Fish processing plant and cannery.

[FR Doc. 2010–11734 Filed 5–17–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–36]

Comprehensive Needs Assessment (CNA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is intended to ensure that HUD Program Participants maintain HUD properties in a condition that is decent, safe, sanitary, and in good repair. The Comprehensive Needs Assessment is a description of current and future needs and resources of certain multifamily housing projects. Owners and non-profit entities submit the information.

DATES: *Comments Due Date: June 17, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0505) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Comprehensive Needs Assessment (CNA).

OMB Approval Number: 2502–0505.

Form Numbers: HUD–96001, HUD–96002, HUD–96003.

Description of the Need for the Information and Its Proposed Use:

This information is intended to ensure that HUD Program Participants maintain HUD properties in a condition that is decent, safe, sanitary, and in good repair. The Comprehensive Needs Assessment is a description of current and future needs and resources of certain multifamily housing projects. Owners and non-profit entities submit the information.

Frequency of Submission: Once to comply with statute.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	311,947	1	....	1.629	....	508,442

Total Estimated Burden Hours: 508,442.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 10, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–11738 Filed 5–17–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–38]

Notice of Submission of Proposed Information Collection to OMB Emergency Comment Request; Multifamily Weatherization Certification

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 1, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *OIRA_Submission @omb.eop.gov;* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Michael Freedberg, Office of Sustainable Housing and Communities, Room 10180. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Michael.Freedberg@hud.gov*; telephone (202) 402–4366 or fax (202) 708–0465. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Freedberg.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to enable HUD to identify additional multifamily public and assisted housing properties or buildings that meet the income guidelines for DOE's Weatherization Assistance Program.

On January 25, 2010, the Department of Energy (DOE) published a regulation in the **Federal Register** that is intended to reduce the review and verification burden related to income eligibility and certain operational requirements under the DOE Weatherization Assistance Program ("weatherization program") for certain properties identified by HUD.

The January 25 rule was developed to address significant additional funding appropriated by Congress for the weatherization program under the American Recovery and Revitalization Act of 2009 ("Recovery Act"). Under the new rule, if a public housing, assisted multi-family or Low Income Housing Tax Credit (LIHTC) building is identified by HUD and included on a list or lists published by DOE, that building meets DOE's weatherization program income requirements without the need for further evaluation or verification, and may meet certain other program requirements.

A minimum requirement for inclusion on these lists is that at least 66 percent of the residents of the building (50 percent for 2–4 unit buildings) must meet DOE's income eligibility requirement, which is currently set at 200 percent of the federal poverty level, or, if a state chooses, 60 percent of the State's median income.

The DOE Final Rule requires that each *building* within a project meet the income qualification requirements in order to be included on the published eligibility list, whereas HUD records for assisted properties are at generally at the *property* or *project* level—which may contain more than one building. The initial list of properties provided by HUD to DOE contains properties that HUD was able to verify income eligibility for participation by utilizing existing available information.

The buildings HUD was able to provide to DOE for inclusion on the initial lists were: (1) Projects/properties that consist of a single building, where at least 66 percent of the residents meet DOE's income requirements; and (2) projects/properties with more than one building where 100 percent of the project/property's residents meet DOE's income requirements.

A number of property owners have subsequently contacted HUD to request that properties not included on these initial lists be checked as to their eligibility. In order to enable HUD to verify additional buildings within projects/properties that may meet DOE's income guidelines, additional information is needed. Property owners may e-mail HUD at *energyaction@hud.gov* with a list of projects that the property owner believes should be included on the next published list of eligible buildings. For each property, a certification from the owner with the following information must be provided:

a. Property/Project ID number and address;

b. Number of individual buildings within that project/property;

c. List of addresses for each building, and the number of units in each building; and

d. For multiple buildings that share the same address, the apartment or unit addresses.

HUD will review the income information for those addresses associated with each building identified in the certification. If, utilizing this information, HUD is able to determine that an individual building within a project/property is income-eligible according to DOE requirements, HUD will provide that building to DOE for posting on DOE's Web site. Alternatively, if, with the additional information supplied, HUD is able to determine that all buildings within the project meet DOE's income requirements, the entire project/property will be forwarded to DOE for posting on DOE's Web site. The additional buildings and projects will be posted as a quarterly addendum to the DOE Lists.

This Emergency Comment Request meets Paperwork Reduction Act requirements for emergency processing as outlined in 5 CFR 1320.13. The emergency processing is related to the rapid obligation and expenditure deadlines established by the Recovery Act, and are therefore extremely time sensitive. HUD cannot reasonably comply with normal clearance procedures, because potential multifamily applicants will be placed at a competitive disadvantage in applying for weatherization program funds appropriated by Congress under the Recovery Act if normal clearance procedures are followed.

The opportunity to take advantage of the funds is essential to the objectives of the partnership established between HUD and DOE for this purpose, and to enable potential multifamily applicants to lower utility costs for low-income residents with these funds.

Further, emergency processing is essential in order to enable HUD to respond in a timely fashion to requests that have already been received from

owners of public housing and assisted housing properties to have HUD review this information for the purpose of identifying these properties as meeting certain requirements for the weatherization program. Demand for the weatherization funds is very high, and long waiting lists already exist in many states for these funds; absent emergency processing of this information request, these individuals are likely to be placed at a competitive disadvantage in applying for Recovery Act weatherization assistance funding, since HUD is otherwise unable to identify these buildings or properties as meeting these requirements under the expedited procedures described in the DOE January 25, 2010 rule.

Failure to secure the information in a timely fashion may delay the ability of potential weatherization program grant recipients to apply for Recovery Act weatherization funds under the streamlined procedures envisioned in the DOE rule.

This Notice also lists the following information:

Title of Proposal: Multifamily Weatherization Certification.

Description of Information Collection: Certification to be provided by owners of public housing and assisted housing multifamily properties to enable HUD to identify additional properties or buildings that meet requirements of DOE's Weatherization Assistance Program, in addition to those properties already posted on DOE's Web site.

OMB Control Number: 2501—Pending.

Agency Form Numbers: None.

Members of Affected Public: Public Housing Authorities, Owners of HUD-assisted multifamily properties.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Responses, and Hours of Responses: The estimated number of respondents is 100, and the number of responses is 1. There will be in total, approximately 100 total responses. The total reporting burden is 50 hours.

Status of the Proposed Information Collection: New collection of information.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 11, 2010.

Leroy McKinney,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–11736 Filed 5–17–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–37]

Uniform Physical Standards & Physical Inspection Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

All multifamily properties with Section 8 project based assistance or housing with HUD insured or HUD Held mortgages or Housing that is receiving insurance from HUD must be inspected regularly. Entities responsible for conducting physical inspections of the properties are HUD, the lender or the owner. Owners/Agents which have been cited with Exigent Health and Safety (EH&S) deficiencies must certify that (EH&S) deficiencies noted during the inspections have been repaired. This information is intended to ensure that HUD Program Participants maintain HUD properties in a condition that is decent, safe, sanitary, and in good repair.

DATES: *Comments Due Date:* June 17, 2010

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0369) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Uniform Physical Standards & Physical Inspection Requirements.

OMB Approval Number: 2502–0369.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: All multifamily properties with Section 8 project based assistance or housing with HUD insured or HUD Held mortgages or Housing that is receiving insurance from HUD must be inspected regularly. Entities responsible for conducting physical inspections of the properties are HUD, the lender or the owner. Owners/Agents which have been cited with Exigent Health and Safety (EH&S) deficiencies must certify that (EH&S) deficiencies noted during the inspections have been repaired. This information is intended to ensure that HUD Program Participants maintain HUD properties in a condition that is decent, safe, sanitary, and in good repair.

Frequency of Submission: Annually, Semi Annually, Every 3 years.

	Number of respondents	Annual responses	×	House per response	=	Burden hours
Reporting Burden	10,576	1		3.1		32,953

Total Estimated Burden Hours: 32,953.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 10, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–11737 Filed 5–17–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–11]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Housing Authority of Owensboro for the purchase and installation of tank-less water heaters at Adams Village.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on April 23, 2010, upon request of the Housing Authority of Owensboro, HUD granted an exception to the applicability of the Buy American requirements with respect to work, using CFRFC grant funds, based on the fact that the relevant manufactured goods (tank-less water heaters) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: May 10, 2010.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–11732 Filed 5–17–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5413–N–01]

Section 8 Housing Choice Voucher Program—Demonstration Project of Small Area Fair Market Rents in Certain Metropolitan Areas for Fiscal Year 2011

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Demonstration Project of Small Area Fair Market Rents (FMRs) in Selected Metropolitan Areas for Fiscal Year (FY) 2011.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standard amounts for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program (Mod Rehab), and to serve as a rent ceiling in the HOME rental assistance program. Today's notice announces a demonstration project that will set small area FMRs for the HCV program within certain metropolitan areas, and requests comments on several topics related to small area FMRs, including how these small areas should be defined. Small area FMRs calculated for the Demonstration projects will be used only in the Section 8 HCV program and will not affect rents in any other HUD or other federal program. HUD expects that small area FMRs will provide Section 8 tenants with greater ability to move into opportunity areas where jobs, transportation, and educational opportunities exist, and prevent undue subsidy in lower-rent areas.

DATES: *Comments Due Date:* July 19, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's small area FMR demonstration, as announced in this notice, to the Office of General Counsel, Rules Docket

Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" of this notice.

Submission of Hard Copy Comments. To ensure that the information is fully considered by all of the reviewers, each commenter submitting hard copy comments, by mail or hand delivery, should submit comments or requests to the address above, addressed to the attention of the Rules Docket Clerk. Due to security measures at all Federal agencies, submission of comments or requests by mail often result in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Comments. All comments submitted to HUD regarding this notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the documents must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Copies of all documents submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop small area FMRs, please contact Peter B. Kahn or Marie L. Lihn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone number 202–708–0590 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the HCV program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (nonluxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

Currently FMRs are calculated for all nonmetropolitan counties and metropolitan areas. The same FMR is available throughout a nonmetropolitan county or a metropolitan area, which is generally comprised of several metropolitan counties. FMRs in a metropolitan area represent the 40th-percentile (or in special circumstances the 50th-percentile) gross rent of the entire HUD-defined metropolitan area. Public housing agencies (PHAs) may set a payment standard within 90 percent to 110 percent of the FMR. PHAs may determine that payment standards that are higher than 110 percent, or lower than 90 percent, are needed to make the voucher program work in subareas of their market; in this instance, a PHA would request HUD approval for payment standards below 90 percent or exception payment standards above 110 percent. These requests cannot represent more than 50 percent of the population of the area (see 24 CFR 982.503).

In the past, HUD has not had the means to maintain and update a small area FMR system. In late 2010, the Census Bureau will make publicly available the data it collected over the first 5 years of the American Community Survey (ACS) in 5-year aggregations for the areas with population of less than 20,000. With these data, HUD will be able to update FMR estimates in smaller geographic areas than is currently possible using ACS data at one-year or 3-year aggregations. HUD intends to use this data to establish a program of smaller area FMRs for metropolitan areas. To determine how best to implement a comprehensive small area FMR program, HUD will operate small area FMR demonstration projects for the HCV program using 2000 Census data to determine FMRs for smaller areas. HUD expects that small area FMRs will provide Section 8 tenants with greater ability to move into opportunity areas, where jobs, transportation and educational opportunities exist, and prevent undue subsidy in lower-rent areas. Small area FMRs will alter some administrative responsibilities of PHAs that administer housing voucher programs, but it is unclear what the net effect will be. For example, small area FMRs are likely to reduce the time needed to determine whether rents are reasonable. (Rent reasonableness tests reflect the conditions and characteristics of units relative to others in the area, as well as market rents in the immediate area of the units). While the requirement to determine rent reasonableness based on the condition and characteristics of individual units will remain, less comparative data may be needed, since local area baseline rents will largely be embedded in the small area FMR. Small area FMRs will also increase the number of payment standards used in a metropolitan area. The small area FMR demonstration projects will provide HUD with insight into the administration of small area FMRs before implementing such a program nationwide.

The first demonstration projects will begin October 1, 2010 (the beginning of FY2011), with others being added prior to the beginning of Calendar Year 2011. Small area FMRs would be rolled out to all metropolitan areas at a later date, provided that the small area FMR demonstration project shows that voucher program operation using small area FMRs is feasible.

For illustrative purposes, the following Web site provides hypothetical Small Area FMRs that are based on the current FY2010 FMRs: *http://www.huduser.org/portal/datasets/fmr.html.* Comments may be provided on these FMRs.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD Web site at *http://www.hudclips.org.* **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site, *http://www.gpoaccess.gov/fr/index.html.*

II. Methodology for Small Area FMRs

Currently, FMRs are determined based on Office of Management and Budget (OMB) Core Based Statistical Areas (CBSAs), with some modifications based on pre-FY2006 FMR area definitions for metropolitan areas. For nonmetropolitan areas, the basic unit of geography is at the county level.[1] The standards for definition of CBSAs are based on a review of journey-to-work data, or commuting patterns, as the basis for grouping counties together to form CBSAs.[2]

Use of metropolitan area-wide FMRs allows HUD's Section 8 Voucher tenants access to different parts of a metropolitan area; however, because FMRs generally are set at the 40th percentile of the metropolitan rent distribution, certain neighborhoods may not have many units available in the FMR range. That is why HUD has an exception payment standard policy that allows payments standards to be set much higher than the FMR, but the policy is dependent on a showing of program need in terms of whether or not suitable housing is available. To make a broader range of neighborhoods accessible to its clients, HUD is researching ways to set FMRs at a more localized level. Currently, HUD is focusing on a methodology that would use small areas, defined by U.S. Postal Service ZIP codes, as the basis for FMRs in metropolitan areas. For nonmetropolitan areas, counties would continue to be used as the basis for FMRs.

The most recent data regarding rents, incomes, and other socio-economic information collected by the U.S. Census Bureau comes from the ACS. At this time, only 1-year and 3-year ACS tables are available. ACS 5-year data are expected to have sufficient data at the small area level available to permit the calculation of statistically reliable FMRs for many ZIP codes in metropolitan areas. However, the first publication of 5-year ACS data does not begin until after October 1, 2010, so for the FY2011 small area FMR demonstration projects, HUD will have to use a different data source; HUD will use data from the 2000 Decennial Census to estimate the rent relationship (rental rate ratio) between the OMB-defined CBSA and each ZIP code within the given metropolitan area.[3] The individual ZIP code-level 2-bedroom FMR for each part of the FMR area is the product of the rental rate ratio and the 2-bedroom FMR for that area's CBSA as calculated using methods employed for past metropolitan area FMR estimates.

Before a rent relationship can be determined, HUD first eliminates any records where there were no units with occupants paying cash rent. HUD then aggregates these rental distribution data for each CBSA and calculates a median (50th-percentile) gross rent across all bedroom sizes. These CBSA median gross rents serve as the denominator in the rent relationship calculation. HUD then aggregates the rental distributions for each ZIP code within a given CBSA (ZIP codes can cross county boundaries; therefore, there may be multiple records for each ZIP code within a single CBSA, and HUD aggregates these multiple records). A median gross rent is calculated for each ZIP code (or ZIP code part for ZIP codes spanning CBSA boundaries). HUD restricts the use of ZIP code level median gross rents to those areas that have at least 1,000 cash rental unit observations. HUD anticipates that the set of ZIP codes with at least 1,000 cash renter-occupied units in the 2000 Decennial Census will be representative of the set of ZIP codes with statistically valid 5-year ACS data that can be used to set small area FMRs.

The rent relationship is calculated in the following manner for those ZIP codes within the metropolitan area that have 1,000 or more cash rental units:

Rental Rate Ratio = Median Gross Rent for ZIP Code Area/Median Gross Rent for CBSA

The rent relationship is capped at 150 percent for areas that would otherwise be greater. If the ZIP code within the CBSA does not have 1,000 cash rental units, then the rent relationship is calculated as:

Rental Rate Ratio = Median Gross Rent STCO/Median Gross Rent of the CBSA

where STCO is the county within the state containing the ZIP code.[4] For metropolitan areas, FMRs will be calculated and published for each small area. ZIP codes were chosen because they localize rental rates and a unit's ZIP code is easily identified both by PHAs and by tenants.

As previously stated, the individual ZIP code level 2-bedroom FMR for each part of the FMR area is the product of the rental rate ratio and the 2-bedroom FMR for that area's CBSA, as calculated using methods employed for past metropolitan area FMR estimates. To set the floor for small area FMRs in a metropolitan area, this product is then compared to the state nonmetropolitan minimum 2-bedroom rent for the state the area is located in and, if the ZIP code rent determined using the rental rate ratio is less than the minimum, the ZIP code rent is set at the nonmetropolitan minimum for that state. The relationship between 2-bedroom units and other bedroom sizes has been estimated from Decennial Census data and then held constant until superseded by more recent data. Small area FMRs for other bedroom sizes will be calculated based on the bedroom-size relationships estimated for the large area of geography. HUD anticipates updating the bedroom rental rate ratios with the release of 5-year ACS data (covering 2005 though 2009), and then once every 5 years when the 5-year ACS sample is completely replaced.[5] The final calculated rents are then rounded to the nearest $25.

Small area FMRs for all metropolitan areas are available for viewing and download on the Internet at *http://www.huduser.org/portal/datasets/fmr.html.* These will be updated using FY2011 FMRs and posted on the Web site when the proposed FY2011 FMR notice is published. Small area FMRs calculated for the demonstration projects will be used only in the Section 8 HCV program and will not affect rents in any other HUD or other federal program. PHAs in small area FMR demonstration sites will be empowered to renew pre-existing HAP contracts based on payment standards outside the new basic range (90 to 110 percent of the small area FMR) for tenants who wish to remain in their existing units and whose existing payment standards would otherwise fall outside the new basic range due to the

[1] In some sparsely populated counties where statistically reliable information was not available from the 2000 Decennial Census, county groups are used instead.

[2] OMB published a **Federal Register** notice (65 FR 82228), available at *http://www.whitehouse.gov/omb/fedreg/metroareas122700.pdf,* that outlined its decisions for how to create CBSAs and responses to public comments concerning the formation of CBSAs.

[3] Note that some ZIP codes span metropolitan area boundaries so that a ZIP code may contain parts of a metropolitan area and one (or more) nonmetropolitan county (counties), or part of another metropolitan CBSA. As in current FMR policy, nonmetropolitan counties would not be broken along ZIP code or any other lines under the small area FMR policy. ZIP codes that span more than one metropolitan CBSA would have different FMRs in each CBSA as they do under current metropolitan FMR policy.

[4] For ZIP codes with fewer than 1000 cash rental units that cross county boundaries, the median gross rent in the numerator is calculated as the rental unit weighted average of the median gross rents for each county containing the ZIP code.

[5] The current decennial data is not robust enough to lead HUD to believe that updating bedroom ratios on a more frequent basis would provide many changes. The current bedroom ratios are constrained by ranges that reflect the average relationship of a given bedroom size to the 2-bedroom rent, and, for the 3-bedroom and 4-bedroom rents, bonuses have been added to assist with the operation of the Section 8 program.

implementation of the small area FMR demonstration project.

III. Requirements for Participation in the Small Area FMR Demonstration Project

The small area FMR demonstration project is intended to cover a limited set of FMR areas so that HUD can provide adequate technical assistance to the participating PHAs and monitor the effects and effectiveness of the policy. At the same time, HUD seeks to have all PHAs in small area FMR demonstration project areas firmly committed to implementing the program to achieve its stated goals. HUD will apply three principles for selecting participating FMR areas if participation needs to be limited because too many areas volunteer: (1) The participant area is large enough that small area FMRs will result in substantial variation in rents, (2) the greatest possible proportion of voucher tenants are served by PHAs that are willing participants in the demonstration, and (3) the PHAs in the area have demonstrated previous commitment, within the flexibilities available in the voucher program, to set voucher payment standards at varying and appropriate levels.

Larger FMR areas provide the greatest potential benefit from the small area FMR proposal in that they are likelier to have a wider array of market rents that can be captured by the proposed methodology. HUD may therefore limit participation in the small area FMR demonstration project to FMR areas meeting the size (100 or more census tracts) and affordable housing concentration (in less than 70 percent of their census tracts containing 10 or more rental units, at least 30 percent of rental units rent for the 40th-percentile two-bedroom FMR or less) criteria for eligibility for the 50th-percentile FMR at 24 CFR 888.113.

The small area FMR demonstration project will not be effective unless the PHAs that operate voucher programs covering the vast majority of voucher tenants in a metropolitan area agree to participate and abide by the small area rents. Therefore, HUD is requiring that PHAs requesting participation in the small area FMR demonstration project must account for at least 80 percent of the voucher tenants in that metropolitan area. If the PHAs represent a smaller percentage of the voucher tenant population, they will not be able to participate. HUD will consider as evidence a joint letter requesting participation in the small area FMR demonstration project, signed by the Executive Director and/or Board Chair of each PHA in the metropolitan area jointly making the request. HUD will verify, using data for Calendar Year 2009, that the signatories represent at least 80 percent of the voucher tenants residing in each nominated metropolitan area. HUD will notify the PHAs if they are found to represent fewer than 80 percent of voucher tenants in the metropolitan area, so that they may enlist participation by additional PHAs in the metropolitan area.

Applicants who provide evidence that they are using multiple payment standards or that use exception payment standards may be given priority for participating in the demonstration project. Through their current operating procedures, these applicants are already showing the ability and willingness to administer the project using multiple rent structures and are likely able to provide HUD with valuable feedback on the small area FMRs HUD calculates and provides.

IV. Request for Public Comment on Small Area FMRs and Demonstration Eligibility Criteria

Before HUD institutes the small area FMR demonstration project, HUD would like to solicit comments on the implementation of small area FMRs. The following is a list of issues that maybe addressed in comments:

- Should HUD institute caps and floors on small area FMRs? As proposed, the current cap is 150 percent of the metropolitan FMR, and the current floor is the state nonmetropolitan minimum FMR. Are these appropriate, or should they be changed or eliminated? What is an appropriate amount or percentage for caps and floors?
- The use of small area FMRs in metropolitan areas will result in no areas being big enough to qualify for 50th-percentile FMRs. (The goal of the 50th-percentile FMR policy should be more efficiently addressed through the use of small area FMRs.) Should HUD revise the 50th-percentile FMR policy or eliminate it, and why?
- The exception payment standard policy, which is based on a relationship like that used to set the small area FMRs, will generally be redundant and could therefore be eliminated if the small area FMR policy is adopted. Are there any instances where an exception payment standard policy might still be useful? Such instances could include, for example, areas where rents have changed so rapidly due to extraordinary circumstances (such as natural disasters, or rapid economic change) that existing statistical methods cannot determine accurate rents, but PHAs can show that their voucher program operations have been impacted. If the exception payment standard policy remains in effect, should the exceptions be continued for nonmetropolitan counties only, or for larger areas within a metropolitan area?
- Do small area FMRs increase the administrative burden of PHAs, and if so, how can this be reduced?
- Is the proposed rounding protocol of $25 appropriate, or should small area FMRs be rounded to a larger or smaller amount?
- Should state minimums be rounded both up and down? Should they be rounded before comparison with a ZIP code rent?

In addition, comments may discuss the proposed HUD methodology for the small area FMRs that would be used for the demonstration project, including the use of 2000 Census data for the demonstration projects and the anomalies created by that data; using 5-year ACS data and implementing small area FMRs in metropolitan areas only; addressing the need, if it exists, for small area FMRs in nonmetropolitan counties; and addressing the general need for and implementation of a small area FMR demonstration project.

HUD also seeks comments on the eligibility criteria for the small area FMR demonstration project. Should the demonstration be open to smaller metropolitan areas than those meeting the size criterion for 50th-percentile FMR eligibility? Should, or should not, the affordable housing concentration criterion be a consideration in selecting participating areas? Is the 80 percent-of-voucher-tenants standard appropriate? Is there a better way for PHAs to demonstrate commitment to the demonstration project than a joint letter to HUD? Is demonstrated past use of multiple payment standards an appropriate criterion for participation?

V. Implementation of the Small Area FMR Demonstration Program

The first small area FMR demonstration projects for the HCV program are expected to be put in place on October 1, 2010, after a review of all comments, when FY2011 FMRs become effective. Other demonstration areas may be added between this date and the beginning of Calendar Year 2011. For illustrative purposes, hypothetical small area FMRs that are based on the current FY2010 FMRs are available for review on the HUD USER Web site at *http://www.huduser.org/portal/datasets/fmr.html.* The **Federal Register** notice on proposed FY2011 FMRs will include an update of these potential small area FMRs and the selection criteria for areas

interested in being a part of the demonstration project. The demonstration project will operate for approximately one year before a complete national implementation of small area FMRs will be proposed. The timing of full implementation will be determined based on the outcomes of the demonstrations.

Dated: May 12, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–11731 Filed 5–17–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for the General Management Plan; Monocacy National Battlefield

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the General Management Plan for Monocacy National Battlefield.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement for the General Management Plan for Monocacy National Battlefield. The plan will provide guidance to park management for administration, development, and interpretation of park resources over the next 20 years. Impact topics addressed were cultural resources (cultural landscapes and historic structures); visitor use and interpretation, socioeconomic environment; transportation, access and circulation; and national battlefield operations.

The document describes a No Action Alternative (continuation of existing management) and three Action Alternatives, one of which was identified as the selected alternative.

Alternative 2 would move the administrative and maintenance staff into local leased space. An alternative transportation system would be implemented. New trails would be constructed to outlying features of the battlefield. Safety improvements would be implemented at the New Jersey Monument and a commemorative area developed at the Pennsylvania and Vermont Memorials. A deck crossing Interstate 270 (I–270) would be constructed.

Alternative 3 would move NPS administration facilities into the Thomas House and expand the existing maintenance facility. There would be no alternative transportation system for visitors. New trails would be constructed to outlying features of the battlefield and safety improvements would be implemented at the New Jersey Monument. A commemorative area would be developed at the Pennsylvania and Vermont Memorials but no new monuments would be allowed.

Alternative 4, the selected preferred alternative, would move NPS administrative facilities into the Thomas House and an expanded maintenance facility would be developed at the existing site. Visitors would transit the battlefield in their automobiles. All historic structures would be preserved with exhibits in the Worthington House and Thomas outbuilding. New trails would be constructed to outlying features of the battlefield and commemorative memorial locations would be upgraded. A pedestrian-only deck would be constructed over I–270 between the Worthington Farm and Thomas Farm.

The Draft Environmental Impact Statement for the General Management Plan was made available for public review from September 2008 to July 1, 2009. The official review period following the **Federal Register** Notice of Availability was from May 2 to July 1, 2009. Approximately 350 copies of the plan were mailed to agencies, organizations, and the national battlefield mailing list. In addition, the availability of the document and information about public meetings were announced in the local newspaper. Following initial distribution of the draft plan, three public meetings were held in 2009—June 9 during the review period, and two on September 24. The NPS received 34 comments during the review period. Because comments received did not meet the criteria for "substantive comment," a request was granted by the Department of the Interior Office of Environmental Policy and Compliance to undertake this abbreviated format Final Environmental Impact Statement for the General Management Plan.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement for the General Management Plan.

ADDRESSES: Information will be available for public review online at *http://parkplanning.nps.gov,* or available on C–D. Hard copies may be obtained by contacting Superintendent Susan Trail, Monocacy National Battlefield, 4801 Urbana Pike, Frederick, Maryland, or by telephone at (301) 694–3147.

FOR FURTHER INFORMATION CONTACT: David Hayes, Regional Planner and Transportation Liaison, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242, by telephone at (202) 619–7277, or by e-mail at *David_Hayes@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS evaluated a No Action Alternative and three Action Alternatives for management, development, and interpretation in the Final Environmental Impact Statement for the General Management Plan. All Action Alternatives provide for the preservation of all park cultural and natural resources. However, the selected preferred alternative (Alternative 4) provides the best variety of visitor experiences, the widest access to all areas of Monocacy National Battlefield, and the most appropriate use of historic resources for interpretive and other park operational purposes. Overall, it best meets NPS purposes and goals for Monocacy National Battlefield while meeting National Environmental Policy Act goals. The selected preferred alternative will not result in the impairment of park resources and will allow the NPS to conserve park resources while providing for their enjoyment by visitors.

Dated: April 28, 2010.

Margaret O'Dell,

Regional Director, National Capital Region.

[FR Doc. 2010–11819 Filed 5–17–10; 8:45 am]

BILLING CODE 4312–57–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for the General Management Plan; Harpers Ferry National Historical Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement for the General Management Plan for Harpers Ferry National Historical Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (2)(C), the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement for the General Management Plan for Harpers Ferry

National Historical Park in West Virginia, Virginia, and Maryland. The plan will provide guidance to park management for administration, development, and interpretation of park resources over the next 20 years. Impact topics addressed were cultural resources, natural resources, visitor use and experience, socioeconomic environment, and NPS operations.

The document describes a No Action Alternative (Alternative 1, continuation of existing management) and two Action Alternatives.

Alternative 2 takes a traditional approach in which each location within the park is managed to reflect the most significant period or era associated with it. An enlarged contact station on Cavalier Heights would be developed. Management activities would focus on the preservation of the resources as well as the presentation of the interpretive themes appropriate to each location. Outlying portions of the park would be connected by an auto tour and round-the-park trail system. The existing transportation system would also be expanded to include more of the park. African American history would be elevated in prominence on Camp Hill and NPS staff would work with partners to promote protection of and visitation to sites throughout the local area. A public/private partnership would be cultivated to rehabilitate and manage the historic Shipley School.

Alternative 3 would provide increased connections with private businesses and public/private organizations to help utilize, maintain, and interpret historic structures while bringing additional life and excitement to Lower Town. A joint NPS/state tourism entrance complex would be developed. This alternative would provide enhanced visitor services ensuring visitor needs were met not only in the park but in the surrounding counties. Historic structures would be preserved and interpreted. Some structures would be leased to non-NPS entities to ensure upkeep and lessen the financial burden on the park. A new headquarters building would be developed somewhere in the Harpers Ferry vicinity. An enlarged transportation system would be operated in partnership with Main Street Harpers Ferry. A public/private partnership would be developed to rehabilitate and manage the historic Shipley School.

Alternative 2 is the NPS selected preferred alternative.

The Draft Environmental Impact Statement for the General Management Plan was made available for public review from May 2 to July 1, 2009. Approximately 3,200 copies of the plan were mailed to agencies, organizations, and Harpers Ferry National Historical Park's mailing list. The availability of the document and information about public meetings were also announced in the local newspaper. Two public meetings were held September 2008 following initial distribution of the draft plan, and an additional public meeting held June 9, 2009, during the review period. Thirty-four comments were received during the review period. Because comments received did not meet the criteria for "substantive comment," a request was granted by the Department of the Interior Office of Environmental Policy and Compliance to undertake this abbreviated format Final Environmental Impact Statement for the General Management Plan.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement for the General Management Plan.

ADDRESSES: Information will be available for public review online at *http://parkplanning.nps.gov,* or available on C–D. Hard copies may be obtained by contacting Superintendent Rebecca Harriett, Harpers Ferry National Historical Park, at 485 Fillmore Street, P.O. Box 65, Harpers Ferry, West Virginia 25425, or by telephone at (304) 535–6224.

FOR FURTHER INFORMATION CONTACT: David Hayes, Regional Planner and Transportation Liaison, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242, by telephone at (202) 619–7277, or by e-mail at *David_Hayes@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS evaluated a No Action Alternative and two Action Alternatives for management, development, and interpretation in the Final Environmental Impact Statement for the General Management Plan. Both Action Alternatives provide for the preservation of all park cultural and natural resources. However, the selected preferred alternative, Alternative 2, provides the best variety of visitor experiences, the widest access to all areas of the national historical park, and the most appropriate use of historic resources for interpretive and other park operational purposes. Overall, it best meets NPS purposes and goals for Harpers Ferry National Historical Park while meeting National Environmental Policy Act goals. The selected preferred alternative will not result in the impairment of park resources and will allow the NPS to conserve park resources while providing for their enjoyment by visitors.

Dated: April 28, 2010.

Margaret O'Dell,

Regional Director, National Capital Region.

[FR Doc. 2010–11817 Filed 5–17–10; 8:45 am]

BILLING CODE 4312–JP–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

IDAHO: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The supplemental plat prepared to amend certain lotting in sections 5 and 11, T. 5 S., R. 4 W., Boise Meridian, Idaho, was accepted January 7, 2010.

The plat constituting the entire survey record of the corrective dependent resurvey of a portion of the subdivisional lines, T. 2 N., R. 18 E., of the Boise Meridian, Idaho, Group Number 1274, was accepted January 15, 2010.

The plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of section 18, T. 14 S., R. 27 E., of the Boise Meridian, Idaho, Group Number 1282, was accepted January 22, 2010. The plat constituting the entire survey record of the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of section 2, T. 7 N., R. 39 E., of the Boise Meridian, Idaho, Group Number 1284, was accepted January 26, 2010.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 4, 10, and 15, and the metes-and-bounds survey of the centerline of U.S. Highway No. 93 in sections 3, 4, 10, and 15, T. 12 N., R. 20 E., of the Boise Meridian, Idaho, Group Number 1120, was accepted March 31, 2005.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel North (south boundary), a portion of

the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 19, 29, 30, 32, and 33, the metes-and-bounds survey of lot 8, section 19, and the metes-and-bounds survey of the centerline of U.S. Highway No. 93 in sections 19, 20, 29, 32, and 33, T. 13 N., R. 20 E., of the Boise Meridian, Idaho, Group Number 1120, was accepted March 31, 2005.

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 20, T. 1 N., R. 14 E., of the Boise Meridian, Idaho, Group Number 1278, was accepted February 3, 2010.

The supplemental plat prepared to amend certain lotting in section 1, T. 3 S., R. 36 E., Boise Meridian, Idaho, was accepted February 16, 2010.

The supplemental plat prepared to show amended lottings in section 28, T. 48 N., R. 2 E., Boise Meridian, Idaho, was accepted March 3, 2010.

The supplemental plat prepared to create a parcel for that portion of Tract 44 which lies in the NW1/4 of the NW1/of section 17, T. 6 S., R. 34 E., Boise Meridian, Idaho, was accepted March 18, 2010.

This survey was executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat representing the retracement of portions of the west and north boundaries and subdivisional lines, and the metes-and-bounds survey of certain tracts in sections 3, 7, 8, 10, 14, 15, 16, 17, 21, 22, and 23, T. 6 S., R. 34 E., of the Boise Meridian, Idaho, Group Number 1272, was accepted February 5, 2010.

The plat representing the dependent resurvey of portions of the subdivisional lines, and the subdivision of sections 20 and 29, T. 7 N., R. 24 E., of the Boise Meridian, Idaho, Group Number 1225, was accepted February 18, 2010.

Dated: April 1, 2010.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2010–11546 Filed 5–17–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2010–N101; 81331–1334–8TWG–W4]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 9 a.m. to 5 p.m. on Wednesday, June 9, 2010.

ADDRESSES: The meeting will be held at the Trinity County Library, 211 Main St., Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: *Meeting Information:* Randy A. Brown, TAMWG Designated Federal Officer, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) Information:* Jennifer Faler, Acting Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; e-mail: *jfaler@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- TRRP budget;
- Science program proposals and work plan;
- Assessment of need for augmented late-summer flows;
- Channel rehabilitation program;
- Hatchery operations review;
- Trinity River temperature planning and management;
- Trinity Lake recreation issues; and
- TAMWG recommendations, and status of previous recommendations.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: May 12, 2010.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2010–11805 Filed 5–17–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N096] [96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before June 17, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*) require that we invite public comment before final action on these permit applications.

III. Permit Applications

Endangered Species

Applicant: Zoological Society of San Diego, San Diego, CA; PRT-09145A

The applicant requests a permit to export one female captive bred giant panda (*Ailuropoda melanoleuca*) born at the zoo in 2005 and owned by the Government of China, to the Wolong Nature Reserve, China under the terms of their loan agreement with the China Wildlife Conservation Association. This export is part of the approved loan program for the purpose of enhancement of the survival of the species through scientific research as outlined in the Zoological Society of San Diego's original permit.

Applicant: George Carden Circus International, Inc., Springfield, MO; PRT -070854, 079868, 079870, 079871, and 079872.

The applicant requests the re-issuance of their permits to re-export and re-import five female Asian elephants (*Elephas maximus*) to worldwide locations for the purposes of enhancement of the species through conservation education. The permit numbers and animals are: 070854, Bimbo Jr.; 079868, Vickie; 079870, Jenny; 079871, Judy and 079872, Cyd. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Applicant: University of California, San Diego, CA; PRT-236267

On March 1, 2010, we published a **Federal Register** notice inviting the public to comment on an application for permits to conduct certain activities with endangered species (75 FR 9251). We made an error and neglected to report one species from which specimens would be obtained. In addition to the three species listed, DNA and/or cell lines from the Sumatran orangutan (*Pongo abelii*) would be obtained for the purpose of scientific research.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John Turner, Fresco, CA; PRT-02299A

Applicant: Robert Andersen, La Salle, CO; PRT-10431A

Applicant: James Cordock, Indiantown, FL; PRT-11227A

Dated: May 7, 2010

Brenda Tapia

Program Analyst, Branch of Permits, Division of Management Authority

[FR Doc. 2010–11847 Filed 5–17– 10; 8:45 am]

BILLING CODE 4310–55–S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–437 and 731–TA–1060 and 1061 (Review)

Carbazole Violet Pigment 23 From China and India; Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order on carbazole violet pigment 23 from India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders on carbazole violet pigment 23 from China and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on November 2, 2009 (74 FR 56663) and determined on February 5, 2010 that it would conduct expedited reviews (75 FR 14468, March 25,2010).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on May 10, 2010. The views of the Commission are contained in USITC Publication 4151 (April 2010), entitled *Carbazole Violet Pigment 23 from China and India: Investigation Nos. 701–TA–437 and 731–TA 1060 and 1061 (Review).*

By order of the Commission.

Issued: May 11, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–11780 Filed 5–17–10; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

[OMB Number 1190–0009]

Civil Rights Division; Disability Rights Section: Agency Information Collection Activities Under Review

ACTION: 30-Day Notice of Information Collection Under Review: Title II of the Americans With Disabilities Act of 1990/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on March 2, 2010, Volume 75, Number 40, Page 9434, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until June 17, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions are requested from the public and affected agencies concerning the proposed collection of information. *Your comments 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 function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(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).

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 Office of Management and Budget (OMB), Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Overview of the information collection is listed below:

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disabilities Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 respondents per year at 0.75 hours per complaint form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 12, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–11756 Filed 5–17–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0005]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 30-Day Notice of Information Collection Under Review: Title III of the Americans With Disabilities Act, Certification of State and Local Government Accessibility Requirements.

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 75, Number 40, pages 9434–9435, on March 2, 2010, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until June 17, 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/or 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:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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 Currently Approved Collection.

(2) *The title of the form/collection.* Title III of the Americans with Disabilities Act, Certification of State and Local Government Accessibility Requirements.

(3) *The agency form number and applicable component of the Department sponsoring the collection.* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Under title III of the Americans with Disabilities Act, on the application of a State or local government, the Assistant Attorney General for Civil Rights (or his or her

designee) may certify that a State or local building code or similar ordinance that establishes accessibility requirements (Code) meets or exceeds the minimum requirements of the ADA for accessibility and usability of "places of public accommodation" and "commercial facilities."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 respondents per year at 32 hours per certification.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 320 hours annual burden.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 12, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–11759 Filed 5–17–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0004]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 30-Day Notice of Information Collection Under Review: Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on March 2, 2010, Volume 75, Number 50, Page 9433, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until June 17, 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 Office of Management and Budget (OMB), Office of 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/or suggestions are requested from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments 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 function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of 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 the information collection is listed below:

(1) *Type of information collection.* Extension of Currently Approved Collection.

(2) *The title of the form/collection.* Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

(3) *The agency form number and applicable component of the Department sponsoring the collection.* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities ("program accessibility"). If structural changes to existing facilities are necessary to accomplish program accessibility, a public entity that employs 50 or more persons must develop a "transition plan" setting forth the steps necessary to complete the structural changes. A copy of the transition plan must be made available for public inspection.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 respondents at 8 hours per transition plan.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 24,000 hours annual burden.

IF ADDITIONAL INFORMATION IS REQUIRED CONTACT: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 12, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–11761 Filed 5–17–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0006]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 30–Day Notice of Information Collection Under Review: Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on March 2, 2010, Volume 75, Number 40, Pages 9432–9433, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until June 17, 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 Office of Management and Budget (OMB), Office of 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/or suggestions are requested from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments 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 function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Overview of this information collection is listed below:

(1) *Type of information collection.* Extension of Currently Approved Collection.

(2) *The title of the form/collection.* Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

(3) *The agency form number and applicable component of the Department sponsoring the collection.* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to evaluate their current services, policies, and practices for compliance with the ADA. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 respondents at 6 hours per self-evaluation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 48,000 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 12, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–11758 Filed 5–17–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1122—NEW]

Office on Violence Against Women; Agency Information Collection Activities: New Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Engaging Men and Youth Program.

The Department of Justice, Office on Violence Against Women (OVW) 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. Comments are encouraged and will be accepted for "sixty days" until July 19, 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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Engaging Men and Youth Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–XXXX. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 35 grantees of the Engaging Men and Youth Program. The grant program is designed to fund projects that develop or enhance new or existing efforts to engage men and youth in preventing crimes of violence against women with the goal of developing mutually respectful, nonviolent relationships.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 35 respondents (grantees from the Engaging Men and Youth Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. An Engaging Men and Youth Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 70 hours, that is 35 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States

Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: *May 13, 2010.*

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–11873 Filed 5–17–10; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

Office on Violence Against Women; Agency Information Collection Activities: New Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Tribal Sexual Assault Services Program.

The Department of Justice, Office on Violence Against Women (OVW) 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. Comments are encouraged and will be accepted for "sixty days" until July 19, 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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Tribal Sexual Assault Services Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–XXXX. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 15 grantees of the Tribal Sexual Assault Services Program. The Sexual Assault Services Program (SASP), created by the Violence Against Women Act of 2005 (VAWA 2005), is the first federal funding stream solely dedicated to the provision of direct intervention and related assistance for victims of sexual assault. The SASP encompasses four different funding streams for States and Territories, Tribes, State Sexual Assault Coalitions, Tribal Coalitions, and culturally specific organizations. Overall, the purpose of SASP is to provide intervention, advocacy, accompaniment, support services, and related assistance for adult, youth, and child victims of sexual assault, family and household members of victims, and those collaterally affected by the sexual assault.

The Tribal SASP supports efforts to help survivors heal from sexual assault trauma through direct intervention and related assistance from social service organizations such as rape crisis centers through 24-hour sexual assault hotlines, crisis intervention, and medical and criminal justice accompaniment. The Tribal SASP will support such services through the establishment, maintenance, and expansion of rape crisis centers and other programs and projects to assist those victimized by sexual assault.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 15 respondents (grantees from the Tribal Sexual Assault Services Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal SASP grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 30 hours, that is 15 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: May 12, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–11773 Filed 5–17–10; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

Office on Violence Against Women; Agency Information Collection Activities: New Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Court Training and Improvements Program.

The Department of Justice, Office on Violence Against Women (OVW) 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. Comments are encouraged and will be accepted for "sixty days" until July 19, 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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Court Training and Improvements Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–XXXX. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 23 grantees of the Court Training and Improvements Program. The grant program creates a unique opportunity for Federal, State, Territorial, and Tribal courts or court-based programs to significantly improve court responses to sexual assault, domestic violence, dating violence, and stalking cases utilizing proven specialized court processes to ensure victim safety and offender accountability. The program challenges courts and court-based programs to work with their communities to develop specialized practices and educational resources that will result in significantly improved responses to sexual assault, domestic violence, dating violence and stalking cases, ensure offender accountability, and promote informed judicial decision making.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 23 respondents (grantees from the Court Training and Improvements Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Court Training and Improvements Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 46 hours, that is 23 grantees completing a form twice a year with an estimated completion time for the form being one hour.

IF ADDITIONAL INFORMATION IS REQUIRED CONTACT: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: *May 12, 2010.*

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–11768 Filed 5–17–10; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

Office on Violence Against Women; Agency Information Collection Activities: New Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Services To Advocate for and Respond to Youth Program.

The Department of Justice, Office on Violence Against Women (OVW) 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. Comments are encouraged and will be accepted for "sixty days" until July 19, 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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Services to Advocate for and Respond to Youth Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–XXXX. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 45 grantees of the Services to Advocate for and Respond to Youth Program. This is the first Federal funding stream solely dedicated to the provision of direct intervention and related assistance for youth victims of sexual assault, domestic violence, dating violence and stalking. Overall, the purpose of the Youth Services Program is to provide direct counseling, advocacy, legal advocacy, and mental health services for youth victims of sexual assault, domestic violence, dating violence, and stalking, as well as linguistically, culturally, or community relevant services for underserved populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 45 respondents (grantees from the Services to Advocate for and Respond to Youth Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Services to Advocate for and Respond to Youth Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 90 hours, that is 45 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: May 12, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–11769 Filed 5–17–10; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 002–2010]

Privacy Act of 1974; System of Records

AGENCY: INTERPOL-United States National Central Bureau (USNCB), Department of Justice.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the USNCB is modifying a system of records notice, specifically the "INTERPOL-USNCB Records System, JUSTICE/INTERPOL–001," last published in the **Federal Register** on April 10, 2002 at 67 FR 17464. This new notice includes additions to the Categories of Records in the System and the Purpose of the System. Changes are also being made to update the Routine Uses to reflect the additional purpose, and to conform with Department-wide model routine use language. No changes are made to the exemptions claimed for the system. The entire notice is republished for convenience to the public.

DATES: In accordance with 5 U.S.C. 552a (e)(4) and (11), the public is given a 30-day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by June 17, 2010

ADDRESSES: The public, OMB, and the Congress are invited to submit any comments to the Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue, Suite 940, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Kevin Smith, General Counsel, INTERPOL-USNCB, U.S. Department of Justice, Washington, DC 20530 at 202–616–4103.

SUPPLEMENTARY INFORMATION: Although the organization uses the names INTERPOL-USNCB and INTERPOL Washington for purposes of public recognition, the INTERPOL-USNCB is not synonymous with the International Criminal Police Organization (ICPO or INTERPOL), which is a private intergovernmental organization headquartered in Lyon, France. The Department of Justice USNCB serves as the United States liaison with the INTERPOL General Secretariat and works in cooperation with the National Central Bureaus of other member countries, but is not an agent, legal representative, nor organization subunit of the International Criminal Police Organization. The records maintained by the INTERPOL-USNCB are separate and distinct from records maintained by INTERPOL, and INTERPOL-USNCB does not have custody of, nor control over, the records of INTERPOL.

In accordance with 5 U.S.C. 552a (r), the Department has provided a report to OMB and the Congress.

Dated: April 29, 2010.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer.

Department of Justice

JUSTICE/INTERPOL–001

SYSTEM NAME:

INTERPOL-United States National Central Bureau (USNCB) Records System, JUSTICE/INTERPOL–001.

SYSTEM LOCATION:

INTERPOL-U.S. National Central Bureau, Department of Justice, Washington, DC 20530 .

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Fugitives; wanted persons; criminal and non-criminal individuals who have been charged or convicted, or are subjects of a criminal investigation with international aspects; individuals who may be associated with stolen weapons, motor vehicles, artifacts, or similar items involved in a crime; victims related to humanitarian or criminal investigations; witnesses or confidential sources in a criminal investigation with international aspects; missing and/or abducted persons (including alleged abductors or other individuals associated with a missing or abducted person), and persons who are unable or unwilling to identify themselves; INTERPOL-USNCB, government and non-government contractors, judicial or law enforcement personnel engaged in the performance of official duties; applicants for a license, grant, contract or benefit; and applicants for positions with entities performing law enforcement and non-law enforcement functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The program records of the INTERPOL-USNCB consist of criminal and non-criminal case files which support the law enforcement and humanitarian functions performed by INTERPOL-USNCB. The files contain electronic and hard copy records containing identifying particulars about covered individuals including fingerprints, names, aliases, places and dates of birth, addresses, photographs, physical descriptions, various identification numbers, DNA records or profiles, reason for the records or lookouts, and details and circumstances surrounding the actual or suspected violations, humanitarian requests or administrative/operational matters. Such records include criminal investigative reports; criminal history records; registration records for criminal offenders; USNCB case files and abstracts; applicant checks related to employment, security, and regulatory matters, licenses, grants, contracts, or benefits, and related data; electronic messages; e-mails; log sheets; notices; bulletins or posters; lookouts (temporary and permanent notices including identification information on an individual or item of interest to law enforcement authorities); warnings about potential threats to public safety from persons, events, or things; investigative notes; computer printouts; letters; memoranda; witness statements; and records related to deceased persons.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 263A, and 28 CFR 0.34.

PURPOSE(S):

The system manages data on foreign and domestic criminal and non-criminal, humanitarian, and related law enforcement matters. These records are maintained to assist and support international law enforcement cooperation. The data includes fingerprints, photographs, criminal investigative reports, criminal history records, registration records for criminal offenders, applicant checks, licenses, facsimiles, letters, memoranda, electronic messages, e-mails, bulletins, posters, log sheets, notices, investigative notes, computer printouts, and similar data. The data is used to facilitate the sharing of information among federal, state, local, and tribal law enforcement-related authorities in the United States, and foreign authorities engaged in law enforcement functions including: the investigation of crimes and criminal activities, obtaining evidence, enforcing and upholding the law, protecting against terrorism and other threats to public safety, the sharing of law enforcement techniques, prevention of crime, assistance in humanitarian matters, the location and arrest of fugitives and wanted persons, the location of missing persons, identification of unknown bodies, border and immigration control, screening for the purpose of establishing that an individual is not wanted or suspected of committing a crime, assisting in litigation, the sharing of criminal history and background information used for investigative purposes and to warn of possible threats to public safety or of someone likely to commit an offense, determinations regarding the suitability of applicants for employment, and the issuance of a license, grant, contract, or benefit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed as follows:

(a) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant record may be referred to the appropriate foreign, federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(b) To any person or entity, and to the public generally, to the extent necessary to obtain information or cooperation in efforts to locate, identify, or arrest, if appropriate, fugitives, wanted persons, subjects of investigations, witnesses, missing persons, abducted persons, and persons who are unable or unwilling to identify themselves.

(c) To any entity maintaining civil, criminal or other information when necessary to obtain information relevant to a decision by a foreign, federal, state, local, territorial, or tribal agency concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(d) To appropriate officials and employees of a federal agency or entity when the information is relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(e) A record may be disclosed to designated officers and employees of foreign, state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

(f) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(g) To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

(h) To the International Criminal Police Organization (INTERPOL) General Secretariat and National Central Bureaus in member countries for criminal law enforcement, humanitarian purposes, and to warn about persons who are possible threats to public safety; and to the INTERPOL Commission for Control of Interpol's Files, an international board comprised of five members having oversight responsibilities regarding the purpose and scope of the information maintained and processed by INTERPOL, for the purpose of facilitating the Commission's functions of processing and responding to individuals' and other entities' requests to Interpol for information about Interpol files.

(i) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

(j) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(k) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(l) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(m) To federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(n) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

(o) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(p) A record relating to a case or matter that has been referred by an agency, or that involves a case or matter within the jurisdiction of an agency, or where the agency or its officials may be

affected by a case or matter, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter.

(q) To a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return, or to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest.

(r) A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a federal, state, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person.

(s) To a federal, state, local, tribal, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

(t) To any entity or person where there is reason to believe that the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

(u) To appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in paper and in electronic form at the INTERPOL-USNCB and at the Washington Federal Records Center. Certain limited data, e.g., that which concerns fugitives and wanted, missing, or abducted persons, and persons who are considered a threat to public safety, is stored in TECS, a system administered by Customs and Border Protection, U.S. Department of Homeland Security, and in the National Criminal Information Center (NCIC) [JUSTICE/FBI–001], for a limited time period, or until apprehended or located.

RETRIEVABILITY:

Information is retrieved primarily by name, system identification number, personal identification numbers, passport numbers, and by weapon serial number or motor vehicle identification number.

SAFEGUARDS:

Information is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Only those individuals specifically authorized have access to the INTERPOL-USNCB records. Access to INTERPOL-USNCB records is given only to those individuals who require access to perform official duties. In addition, USNCB information resides in the secured INTERPOL-USNCB offices that are staffed twenty-four hours a day, seven days a week. Automated data is password secured.

RETENTION AND DISPOSAL:

Case files closed as of April 5, 1982 and thereafter are disposed of as follows: The hard copy (paper record) will be retained on site at the INTERPOL-USNCB for two years after closing. At the end of the two years post closing, the hard copy will be transferred to the Washington National Records Center for storage. The hard copy (paper record) of the case file may be destroyed five years after transfer to the Washington National Records Center, for a total of seven years post closing, if there has been no case activity. Information contained in electronic case files will be stored on a compact disc two years after closing the case and sent to the Washington National Records Center for destruction in five years, or seven years after case closure, if there has been no case activity. Automated information will be flagged as an archived case and maintained on the LAN server for an indefinite period of time.

SYSTEM MANAGER(S) AND ADDRESS:

Director, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530.

Records Management Officer, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530.

Chief Information Officer, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Inquiries regarding whether the system contains a record pertaining to an individual may be addressed to the Director, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530, or to the Freedom of Information Act (FOIA) Specialist at the same location. To enable INTERPOL-USNCB personnel to determine whether the system contains a record relating to him or her, the requester must submit a written request identifying the record system, identifying the category and type of records sought, and providing the individual's full name and at least two items of secondary information (date of birth, social security number, employee identification number, or similar identifying information).

RECORD ACCESS PROCEDURES:

The Attorney General has exempted the INTERPOL-USNCB system from the access, contest, and amendment provisions of the Privacy Act. Some records may be available under the Freedom of Information Act. Inquiries should be addressed to the FOIA/PA Officer, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530. The letter should be clearly marked "Freedom of Information Request" and a return address provided for transmitting any information to the requester. It should also include the Department of Justice Certificate of Identity (FORM DOJ–361, available on the USNCB Web site), or an equivalent statement certifying a requester's identity under penalty of perjury.

CONTESTING RECORD PROCEDURES:

See "Record Access Procedures" above.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include investigating reports, notes, correspondence, messages, photographs, fingerprints, and other identification materials from

federal, state, local, tribal and foreign law enforcement and non-law enforcement agencies (including investigating reports from TECS or NCIC; other non-Department of Justice investigative agencies; client agencies of the Department of Justice); statements of witnesses and parties; and the work product of the staff of the INTERPOL-USNCB working on particular cases. Although the organization uses the names INTERPOL-USNCB and INTERPOL Washington for purposes of public recognition, the INTERPOL-USNCB is not synonymous with the International Criminal Police Organization (ICPO or INTERPOL), which is a private, intergovernmental organization headquartered in Lyon, France. The Department of Justice USNCB serves as the United States liaison with the INTERPOL General Secretariat and works in cooperation with the National Central Bureaus of other member countries, but is not an agent, legal representative, nor organization subunit of the International Criminal Police Organization. The records maintained by the INTERPOL-USNCB are separate and distinct from records maintained by INTERPOL and INTERPOL-USNCB does not have custody of, nor control over, the records of the International Criminal Police Organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), and (k)(2) and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. *See* 28 CFR 16.103.

[FR Doc. 2010–11770 Filed 5–17–10; 8:45 am]

BILLING CODE 4410–BC–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement of the Career Videos for America's Job Seekers Challenge

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: In today's tight employment market the publicly funded workforce investment system has a major responsibility to maximize unemployed workers' opportunities for rapid reemployment by quickly connecting them to the full scope of available jobs. The ability to make such connections can be improved by increasing the workers' knowledge of the jobs that are in demand. The Employment and Training Administration (ETA) has identified 15 high-wage and in-demand occupations about which the U.S. Department of Labor (DOL) would like to share information with the public. To this end, ETA invites members of the public to produce short (1–3 minute) videos focusing on one of 15 occupations' daily activities, necessary Knowledge, Skills, and Abilities (KSAs), and career pathways. Video makers are free to choose which occupation to film from the list of selected occupations. After DOL staff screen all video submissions, the public (including job seekers, One Stop Career Center staff, and our partners in the workforce development system) will vote for their favorite video in each occupation category. These top videos will then be made accessible to the workforce system and posted on DOL Web sites, and the creators of the top videos will receive a cash prize. Successful video challenges have been held at the Department of State, the Department of Education, the Environmental Protection Agency, and other Federal agencies.

SUPPLEMENTARY INFORMATION: Through an outreach campaign that includes a DOL Press Release, E-Blast to the Public Workforce System, e-mails to occupational associations, and blog posts, ETA will encourage the general public, employer associations, Registered Apprenticeship program sponsors, businesses, veterans, youth organizations, educational institutions, and labor organizations to participate in the Career Videos for America's Job Seekers Challenge (hereafter called the Challenge). The Challenge will consist of four phases. Phase 1 will run from May 10 to June 18, 2010. In this phase, the general public, associations, and/or employers can submit their occupational video for one of the 15 occupational categories to *http://www.dolvideochallenge.ideascale.com.* The submitted occupational videos should pertain to one of the following occupations:

1. Biofuels Processing Technicians;
2. Boilermakers;
3. Carpenters;
4. Computer Support Specialists;
5. Energy Auditors;
6. Heating, Air Conditioning, and Refrigeration Mechanics and Installers/Testing Adjusting and Balancing (TAB) Technicians;
7. Licensed Practical and Licensed Vocational Nurse;
8. Medical Assistants;
9. Medical and Clinical Lab Technicians including Cytotechnologists;
10. Medical Records and Health Information Technicians including Medical Billers and Coders;
11. Pipefitters and Steamfitters;
12. Radiological Technologists and Technicians;
13. Solar Thermal Installers and Technicians;
14. Weatherization Installers and Technicians; and
15. Wind Turbine Service Technicians.

Phase 2 will run from June 21 to July 9. During this phase, the DOL/ETA will screen, review, and identify the top three career videos in each occupational category and post these selected videos online at *http://www.dolvideochallenge.ideascale.com* for public review.

Phase 3 will run from July 12 to August 6. During this phase, the public will recommend the top career video in each occupational category. They will also have the opportunity to comment on videos.

Phase 4 will run from August 9 to August 19. In this final phase, DOL and ETA, will communicate the top career video in each occupational category to the workforce development community, educational community, and job seekers by:

1. Posting an announcement of the top ranking videos on key websites including:
   - DOL.gov;
   - DOLETA.gov;
   - White House Office of Science and Technology Policy blog;
   - Workforce3One.org; and Other sites;
2. Highlighting the videos and occupations on ETA's *http://www.CareerOneStop.org* portal, which already houses a variety of occupational videos for the workforce system;
3. Providing additional coverage of the videos on the ETA Communities of Practice, including: 21st Century Apprenticeship, Green Jobs, Reemployment Works, Regional Innovators, and Disability and Employment.
4. Utilizing other communication outlets such as national associations and intergovernmental organizations like the National Association of State Workforce Agencies, the National Association of Workforce Boards, the National Governor's Association, the National Association of Counties, and the Association of Community Colleges.

As a result of the Challenge, job seekers will have a greater awareness of in-demand career opportunities, and the

workforce development system will quickly boost its understanding of these occupations, significantly increasing the number of customers requesting training in these areas.

FOR FURTHER INFORMATION CONTACT: Michael Harding, Room 4510–C Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–2921 (this is not a toll-free number). Fax: 202–693–3015. E-mail: *Harding.Michael@dol.gov*

Signed at Washington, DC, this 6th day of May 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–11802 Filed 5–17–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Design/Mayor's Institute on City Design 25th Anniversary Initiative

(Application review): June 3–4, 2010 in Room 714. A portion of this meeting, from 3:30 p.m. to 4:30 p.m. on June 4th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on June 3rd and from 9 a.m. to 3:30 p.m. and from 4:30 p.m. to 5:30 p.m. on June 4th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 13, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2010–11812 Filed 5–17–10; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance with the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov.* This information may also be requested by telephoning, 703/292–8182.

Dated: May 13, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–11824 Filed 5–17–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0179]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires that the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 22 to May 5, 2010. The last biweekly notice was published on May 4, 2010 (75 FR 23808).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the basis for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or

representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E–Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: March 29, 2010.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 5.5.7, "Reactor Coolant Pump Flywheel Inspection Program," by extending the reactor coolant pump (RCP) motor flywheel inspection interval for certain RCP motors from the currently-approved 10-year inspection interval to an interval not to exceed 20 years. The availability of this TS revision was announced in the **Federal Register** on October 22, 2003 (68 FR 60422) as part of the consolidated line item improvement process. In its application, the licensee affirmed the applicability of the model no significant hazards consideration determination, as published in the **Federal Register** on June 24, 2003 (68 FR 37590).

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change to the RCP flywheel examination frequency does not change the response of the plant to any accidents. The RCP will remain highly reliable and the proposed change will not result in a significant increase in the risk of plant operation. Given the extremely low failure probabilities for the RCP motor flywheel during normal and accident conditions, the extremely low probability of a loss-of-coolant accident (LOCA) with loss of offsite power (LOOP), and assuming a conditional core damage probability (CCDP) of 1.0 (complete failure of safety systems), the core damage frequency (CDF) and change in risk would still not exceed the NRC's [Nuclear Regulatory Commission's] acceptance guidelines contained in RG 1.174 [Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis"] (<1.0E–6 per year). Moreover, considering the uncertainties involved in this evaluation, the risk associated with the postulated failure of an RCP motor flywheel is significantly low. Even if all four RCP motor flywheels are considered in the bounding plant configuration case, the risk is still acceptably low.

The proposed change does not adversely affect accident initiators or precursors, nor alter the design assumptions, conditions, or configuration of the facility, or the manner in which the plant is operated and maintained; alter or prevent the ability of structures, systems, components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits; or affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the type or amount of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposure. The proposed change is consistent with the safety analysis assumptions and resultant consequences. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change in flywheel inspection frequency does not involve any change in the design or operation of the RCP. Nor does the change to examination frequency affect any existing accident scenarios, or create any new or different accident scenarios. Further, the change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or alter the methods governing normal plant operation. In addition, the change does not impose any new or different requirements or eliminate any existing requirements, and does not alter any assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by this change. The proposed change will not result in plant operation in a configuration outside of the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in RG 1.174. There are no significant mechanisms for inservice degradation of the RCP flywheel. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: March 19, 2010.

Description of amendment request: This submittal requests changes to extend the Technical Specification (TS) allowed outage time (AOT) for the Unit 1 and Unit 2 Suppression Pool Cooling (SPC) mode of the Residual Heat Removal (RHR) system, the Residual Heat Removal Service Water (RHRSW) system, the Emergency Service Water (ESW) system, and the A.C. Sources-Operating (Emergency Diesel Generators) from 72 hours to seven (7) days in order to allow for repairs of the RHRSW system piping. Specifically, the proposal adds a footnote to the affected TS limiting conditions for operation to indicate that the 72-hour AOT for the affected system may be extended once per calendar year, for one unit only, for a period of up to 7 days to allow for repairs of one RHRSW subsystem piping with the opposite unit shutdown, reactor vessel head removed and reactor cavity flooded, and other specific compensatory measures in effect.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee (Exelon) has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS changes will not increase the probability of an accident since they will only extend the time period that one RHRSW subsystem, one loop of SPC, one ESW loop and two Emergency Diesel Generators (EDGs) can be out of service. The extension of the time duration that one RHRSW, one ESW loop and two EDGs are out of service has no direct physical impact on the plant. The proposed inoperable RHRSW subsystem, ESW loop and two EDGs are normally in a standby mode while the unit is in [Operational Condition] OPCON 1 or 2 and are not directly supporting plant operation. Therefore, they can have no impact on the plant that would make an accident more likely to occur due to their inoperability.

During transients or events which require these subsystems to be operating, there is sufficient capacity in the operable loops/subsystems and available[,] but inoperable[,] equipment to support plant operation or shutdown. Therefore, failures that are accident initiators will not occur more frequently than previously postulated as a result of the proposed changes.

In addition, the consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR) will not be increased. With one RHRSW subsystem inoperable, one SPC loop, one ESW loop and two EDGs inoperable but verified available prior to entering the proposed configuration, a known quantity of equipment is inoperable. Based on the support functions of the RHRSW system, a review of the plant was performed to determine the impacts that the inoperable RHRSW subsystem would have on other systems. The impacts were identified for each system and it was determined whether there were any adverse effects on the systems. It was then determined how the adverse effects would impact each system's design basis and overall plant safety. The consequences of any postulated accidents occurring on Unit 1 or Unit 2 during these AOT extensions was found to be bounded by the previous analyses as described in the UFSAR. Since the inoperable ESW loop, selected emergency core cooling system (ECCS) pumps and EDGs will be verified available prior to entering the proposed configuration, they would have no impact on other systems.

The minimum equipment required to mitigate the consequences of an accident and/or safely shut down the plant will be operable or available. Therefore, by extending certain AOTs and extending the assumptions concerning the combinations of events for the longer duration of each extended AOT, Exelon concludes that at least the minimum equipment required to mitigate the consequences of an accident and/or safely shut down the plant will still be operable or available during the extended AOT.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes will not create the possibility of a different type of accident since they will only extend the time period that one RHRSW subsystem and one loop of SPC can be out of service, and one ESW loop and two EDGs can be inoperable, but verified available, prior to entering the proposed configuration. The extension of the time duration that one RHRSW subsystem and one SPC loop is out of service, and one ESW loop and two EDGs are inoperable, but verified available, prior to entering the proposed configuration has no direct physical impact on the plant and does not create any new accident initiators. The systems involved are accident mitigation systems. All of the possible impacts that the inoperable equipment may have on its supported systems were previously analyzed in the UFSAR and are the basis for the present TS Action statements and AOTs. The impact of inoperable support systems for a given time duration was previously evaluated and any accident initiators created by the inoperable systems was evaluated. The lengthening of the time duration does not create any additional accident initiators for the plant.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The present RHRSW, SPC, ESW and EDG AOT limits were set to ensure that sufficient safety-related equipment is available for response to all accident conditions and that sufficient decay heat removal capability is available for a loss of coolant accident (LOCA) coincident with a loss of offsite power (LOOP) on one unit and simultaneous safe shutdown of the other unit. A slight reduction in the margin of safety is incurred during the proposed extended AOT due to the increased risk that an event could occur in a 7-day period versus a 72-hour period. This increased risk is judged to be minimal due to the low probability of an event occurring during the extended AOT and based on the following discussion of minimum ECCS/decay heat removal requirements.

The inoperable ESW loop, selected ECCS pumps and EDGs will be verified available prior to entering the proposed configuration; therefore, extension of the AOT will have no effect on the minimum ECCS equipment available or margin of safety.

The reduction in the margin of safety from the extension of the RHRSW, SPC, ESW and EDG AOT limits is not significant since the remaining operable ECCS equipment is adequate to mitigate the consequences of any accident. This conclusion is based on the information contained in General Electric Company documents NEDO–24708A, "Additional Information Required for NRC Staff Generic Report on Boiling Water Reactors," Revision 1, dated December 1980, and NEDC[–]3093P–A, "BWR Owner's Group Technical Specification Improvement Methodology (with Demonstration for BWR ECCS Activation Instrumentation)," dated December 1988. These documents describe the minimum requirements to successfully terminate a transient or LOCA initiating event (with scram), assuming multiple failures with realistic conditions, and were used to justify certain TS AOTs per UFSAR Sections 6.3.1.1.2.o and 6.3.3.1. The minimum requirements for short-term response to an accident would be either one Low Pressure Coolant Injection (LPCI) pump or one Core Spray subsystem in conjunction with Automatic Depressurization System (ADS), or the High Pressure Coolant Injection (HPCI) system, which would be adequate to re-flood the vessel and maintain core cooling sufficient to preclude fuel damage. For long-term response, the minimum requirements would be one loop of RHR for decay heat removal, along with another low-pressure ECCS subsystem. These minimum requirements will be met since implementation of the proposed TS changes will require the operability or availability of HPCI, ADS, two LPCI subsystems (or one LPCI subsystem and one RHR subsystem during decay heat removal) and one Core Spray subsystem be maintained during the 7-day period. Operations personnel are fully qualified by normal periodic training to respond to and mitigate a Design Basis Accident, including the actions needed to ensure decay heat removal while LGS Unit 1 and Unit 2 are in the operational configurations described within this submittal. Accordingly, procedures are already in place that address safe plant shutdown and decay heat removal for situations applicable to those in the proposed AOTs.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: March 24, 2010.

Description of amendment request: The proposed amendment would modify the Three Mile Island, Unit 1 (TMI–1) Technical Specifications (TSs) by relocating specific surveillance frequencies to a new licensee-controlled program called the Surveillance Frequency Control Program. This change incorporates the adoption of Nuclear Energy Institute (NEI) 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies," Revision (Rev.) 1. A description of the Surveillance Frequency Control Program will be added to the TMI–1 TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control

Program [SFCP]. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the [Nuclear Regulatory Commission] NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, Exelon will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1, in accordance with the TS SFCP. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket No. 50–277, Peach Bottom Atomic Power Station (PBAPS), Unit 2, York and Lancaster Counties, Pennsylvania

Date of amendment request: August 28, 2009, as supplemented by letter dated February 25, 2010.

Description of amendment request: The proposed change would modify the PBAPS Unit 2 Technical Specification (TS) Section 5.5.12 to reflect a one-time extension of the Type A containment Integrated Leak Rate Test (ILRT) to no later than October 2015. The proposed TS revision would allow a one-time extension of 5 years to the 10-year frequency of the performance-based leakage rate testing program for the PBAPS Unit 2 containment Type A ILRT test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves a one-time extension of the Primary Containment ILRT interval from 10 years to 15 years. The proposed change does not involve a physical change to the plant [* * *]. The Primary Containment function is to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment itself and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve any accident precursors or initiators. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased by the proposed change.

Continued containment integrity is assured by the established programs for local leak rate testing and inservice/containment inspections, which are unaffected by the proposed change. As documented in NUREG–1493, "Performance-Based Containment Leak-Test Program," dated September 1995, industry experience has shown that local leak rate tests (Type B and C) have identified the vast majority of containment leakage paths, and that ILRTs detect only a small fraction of containment leakage pathways.

The potential consequences of the proposed change have been quantified by analyzing the changes in risk that would result from extending the ILRT interval from 10 years to 15 years. Increasing the ILRT interval to 15 years for this one-time change is considered to be insignificant since it represents a very small change to the PBAPS, Unit 2 risk profile. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. PBAPS, Unit 2 has determined that the increase in conditional containment failure probability due to the proposed change is very small. Therefore, it is concluded that the proposed one-time extension of the Primary Containment ILRT interval from 10 years to 15 years does not significantly increase the consequences of an accident previously evaluated.

Based on the above discussion, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves a one-time extension of the Primary Containment ILRT interval. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (i.e., no new or different type of equipment will be installed)[* * *].

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed one-time extension of the Primary Containment ILRT interval does not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The specific requirements and conditions of the 10 CFR 50 Appendix J testing program plan, as defined in the Technical Specifications, exist to ensure that the degree of Primary Containment structural integrity and leak-tightness that is considered in the plant safety analyses is maintained. The overall containment leakage rate limit specified by the Technical Specifications is maintained, and Type B and C containment leakage tests will continue to be performed at the frequency currently required by the TS.

Containment inspections performed in accordance with [the * * *] plant programs [described above] serve to provide a high degree of assurance that the containment will

not degrade in a manner that is detectable only by an ILRT. Furthermore, a risk assessment using the current PBAPS, Unit 2 Probabilistic Risk Assessment internal events model concluded that extending the ILRT test interval from 10 years to 15 years results in a very small change to the PBAPS, Unit 2 risk profile.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review with the NRC staff changes noted in square brackets above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Florida Power and Light Company (FPL), Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: February 16, 2010.

Description of amendment request: To revise the licensing bases by removing two technical specifications (TSs) that restrict movements of heavy loads over the spent fuel pools.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TS 3/4.9.7, Crane Travel-Spent Fuel Storage Areas (reviewed for both units)

FPL has evaluated whether or not a significant hazards consideration is involved with removing the TS 3/4.9.7, "Crane Travel—Spent Fuel Storage Areas," from the Turkey Point Units 3 and 4 TS by focusing on the three standards set forth in 10 CFR 50.92, "Issuance of amendment," as discussed below:

(1) Would operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The removal of TS 3/4.9.7 will not increase the probability of a fuel handling accident (FHA), as evaluated in Chapter 14.2.1 of the UFSAR [Updated Final Safety Analysis Report], and is considered remote because of the administrative controls and physical limitations imposed on fuel handling operations. The load limit restriction, in conjunction with existing plant documents (for example, Turkey Point heavy load handling procedures) that restrict crane or other heavy load handling operations provide a defense-in-depth approach to handling heavy loads in the spent fuel pool vicinity. The load limitation defined in TS 3/4.9.7 is preserved and will be implemented based on the operation limits and safety margins for the control of heavy loads consistent with NUREG–0612. The TS change does not represent any physical change to the plant systems, structures, or components. Therefore, the systems credited with mitigating the dose consequences of a FHA remain in place. The dose consequences of a fuel handling accident as discussed in Turkey Point UFSAR Chapter 14.2.1 will not increase because of the administrative controls and physical limitations imposed on fuel handling operations which minimize the likelihood of a FHA.

Therefore, facility operation in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Would operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The removal of TS 3/4.9.7 does not represent any physical change to the plant systems, structures, or components. The same operational functions of moving new fuel, spent fuel, or other loads over the spent fuel pool are retained and therefore do not create or increase the possibility of a new or different kind of accident from any accident previously evaluated. Additionally, the load limit of 2000 pounds over the spent fuel pool defined in TS 3/4.9.7 is preserved and implemented in existing plant documents and are established based on the operational limits and safety margins for the control of heavy loads consistent with NUREG–0612. Other measures which preclude the creation of a new or different type of accident include interlocks and physical stops, operator training, and load handling procedures.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Would operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The removal of TS 3/4.9.7 does not change the operational process of moving loads over the spent fuel pool. There are no changes to any physical plant systems, structures, or components. The spent fuel handling crane has weight sensors that are interlocked to limit the total load. In addition, an in-line weight sensing system is provided for each hoist to limit the lifting load to preclude accidental fuel damage should binding occur. When lifting over spent fuel, the total load is limited to 2000 pounds by current procedures, limit switches and load sensors. Because of these measures, no margin of safety is reduced or compromised.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Based on the above, FPL concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

TS 3/4.9.12, Handling of Spent Fuel Cask (reviewed for both units)

FPL has evaluated whether or not a significant hazards consideration is involved with the proposed amendment of removing TS 3/4.9.12, "Handling of Spent Fuel Cask," by focusing on the three standards set forth in 10 CFR 50.92, "Issuance of amendment," as discussed below:

(1) Would operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The removal of TS 3/4.9.12 will not involve a significant increase in the probability or consequences of an accident previously evaluated. The accident evaluated for the existing spent fuel cask handling crane is the drop of a single element cask as cited in UFSAR Section 14.2.1.3, "Cask Drop Accident." This cask drop accident was analyzed and the radiological dose consequence, as a result of the cask drop, is determined to be within the limits of 10 CFR 100. The current spent fuel cask handling crane at Turkey Point Units 3 and 4 has a single 105/15 ton main/auxiliary hook design capacity and is not designed as single-failure-proof. The new spent fuel cask handling crane will be single-failure-proof meeting all of the requirements of NUREG–0554, "Single Failure Proof Cranes for Nuclear Power Plants" and also NUREG–0612, Section 5.1.6, "Single Failure Proof Handling Systems." The probability of a cask drop accident using a single-failure-proof crane designed and operated to these NUREG requirements is considered to be extremely small.

The design for the upgrade of the spent fuel cask handling crane is to increase the capacity to 130/25 tons (main/auxiliary hook). All crane components (hoist, bridge, girders, etc.) are designed and fabricated to retain control of and hold the maximum critical load (a planned 32 element spent fuel cask) in the unlikely event of the failure of a single component, coincident with a Design or Maximum earthquake.

The objectives cited in Section 5.1 of NUREG–0612, "Recommended Guidelines," for the control of heavy loads are satisfied. The probability of a cask drop accident using the new single-failure-proof spent fuel cask crane, as compared to the existing non-single-failure-proof crane, is therefore not increased. The increase of the consequences of an accident previously evaluated is also not increased because the potential for a cask drop by the new upgraded spent fuel cask handling crane is considered to be extremely small.

Further, operational limits, interlocks, procedural and administrative controls, that restrict the handling of heavy loads over fuel stored in the spent fuel pool, provide additional defense-in depth to ensure that a load could not be dropped that would result in dose consequences greater than previously evaluated.

It is concluded that facility operation in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Would operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of the spent fuel cask handling crane after the upgrade to a single-failure-proof design will remain the same as the operation of the existing spent fuel cask handling crane. The distinction is the load that will be lifted.

The new spent fuel cask is a multiple assembly cask, in contrast to a single assembly cask as currently specified for use. The current spent fuel cask handling crane is designed to lift a single element spent fuel cask. The upgraded capacity of the new spent fuel cask handling crane will allow for lifting a cask designed to hold a maximum of 32 spent fuel assemblies. Current operating and administrative procedures that restrict the movement of heavy loads over fuel stored in the spent fuel pool remain in place. The new spent fuel cask handling crane is designed, fabricated and tested to single-failure-proof requirements (NUREG–0554, "Single Failure Proof Cranes for Nuclear Power Plants" and NUREG–0612, Section 5.1.6, "Single Failure Proof Handling Systems") and will be operated within the procedural and administrative framework as the currently installed spent fuel cask handling crane. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created from the removal of TS 3/4.9.12.

Therefore, it can be concluded that the operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Would operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The existing spent fuel cask handling crane is not designed as single-failure-proof in accordance with NUREG–0612. The new spent fuel cask handling crane is designed, and will be fabricated, installed and tested to the single-failure-proof requirements as outlined in NUREG–0612, Section 5.1.6, "Single Failure Proof Handling Systems." The use of the defense-in-depth approach for the control and handling of heavy loads as cited in Section 5.1 of NUREG–0612, "Recommended Guidelines," provides assurance that there is a sufficient margin of safety in the handling of heavy loads. Thereby, the removal of TS 3/4.9.12 will not involve a significant reduction in the margin of safety.

Defense-in-depth measures include operational limits, interlocks, procedural and administrative controls, rigging, load paths, testing, training, maintenance and other related considerations. These measures provide assurance that the margin of safety is not reduced in the operation of the facility by meeting all the requirements of NUREG–0612 and NUREG–0554. The specific requirements and FPL compliance with them is documented in the NUREG–0554 Compliance Matrix [Attachment 3 to this application].

The design for the upgrade of the spent fuel cask handling crane is to increase the capacity to 130/25 tons (main/auxiliary hook). The spent fuel cask handling crane has a Main Hoist and Auxiliary Hoist Cable Safety Factor of a minimum 10:1 on nominal breaking strength at 130 tons and 25 tons respectively and is fully compliant with ASME NOG–1 Section 5425.1. The Main Hoist Hook and Auxiliary Hoist Hook Safety Factor have a 10:1 minimum on ultimate strength at 130 tons and 25 tons, respectively.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Based on the above, FPL concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Acting Branch Chief: Douglas A. Broaddus.

[Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: January 14, 2010.

Description of amendment request: The amendments would revise a number of Technical Specification (TS) requirements, to impose similar restrictions on the movement of non-irradiated fuel assemblies to those currently in place for movement of irradiated fuel assemblies. The additional restrictions will limit the movement of all fuel assemblies over irradiated fuel assemblies in containment or in the fuel storage pool. The affected TS Limiting Conditions for Operation (LCOs) are: LCO 3.3.8, "Containment Purge Isolation Signal (CPIS)," LCO 3.3.9, "Control Room Isolation Signal (CRIS)," LCO 3.7.11, "Control Room Emergency Air Cleanup System (CREACUS)," LCO 3.7.16, "Fuel Storage Pool Water Level," LCO 3.8.2, "AC Sources—Shutdown," LCO 3.8.5, "DC Sources—Shutdown," LCO 3.8.8, "Inverters—Shutdown," LCO 3.8.10, "Distribution Systems—Shutdown," LCO 3.9.3, "Containment Penetrations," and LCO 3.9.6, "Refueling Water Level."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change revises Technical Specifications applicability wording regarding the movement of fuel assemblies in containment and the fuel storage pool at the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 to include the movement of both irradiated and non-irradiated fuel assemblies. The proposed applicability is more comprehensive than the current Applicability.

Expanding the applicability of the relevant Technical Specifications is necessary to account for updated fuel drop analyses which demonstrate that impacted spent fuel assemblies may be damaged. Consequently, movement of non-irradiated fuel assemblies could result in a Fuel Handling Accident that has radiological consequences. Changing the applicability of the relevant Technical Specifications does not affect the probability of a Fuel Handling Accident. The expanded applicability provides assurance that equipment designed to mitigate a Fuel Handling Accident is capable of performing its specified safety function, such that the consequences of an accident are not increased.

Consequently, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from [any] accident previously evaluated?

Response: No.

The revised spent fuel drop analyses demonstrate that impacted fuel assemblies may be damaged as the result of a dropped fuel assembly. The existing SONGS Technical Specifications regarding movement of fuel assemblies are not applicable for movement of non-irradiated fuel assemblies. A drop of a non-irradiated fuel assembly that has radiological consequences could occur during periods when equipment that would be required to mitigate those consequences is not required

to be OPERABLE in accordance with the existing Technical Specifications.

The proposed changes to the Technical Specifications applicability language regarding the movement of fuel assemblies in containment and the fuel storage pool at SONGS Units 2 and 3 ensure that Limiting Conditions of Operation and appropriate Required Actions for required equipment are in effect during fuel movement. This provides assurance that any Fuel Handling Accident that may occur will remain within the initial assumptions of accident analyses.

Consequently, there is no possibility of a new or different kind of accident due to this change.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed Technical Specifications change will not affect protection criterion for plant equipment and will not reduce the margin of safety. By extending the Applicability to the movement of non-irradiated fuel assemblies, the current margin of safety is maintained.

Consequently, there is no significant reduction in a margin of safety due to this change.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Michael T. Markley.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: November 25, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," that would add a new Required Action Q.1 to require restoration of an inoperable Balance of Plant (BOP) ESFAS train to OPERABLE status within 24 hours. In addition, the Completion Times for TS 3.3.2 Required Actions J.1 and O.1 to trip inoperable channels that provide inputs to BOP ESFAS would also be extended to 24 hours. Shutdown track Completion Times to be in MODES 3 and 4 would be increased to reflect longer restoration times. Separate Condition entry for TS Condition J would be restricted to assure that Function 6.g in TS Table 3.3.2–1 will provide a start signal to the motor-driven auxiliary feedwater pumps from one train of BOP ESFAS actuation logic.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed to the protection systems. The same reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. There will be no changes to the BOP ESFAS surveillance and operating limits.

The proposed changes will not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed changes do not affect the way in which safety-related systems perform their functions.

All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR [Final Safety Analysis Report].

The applicable radiological dose acceptance criteria will continue to be met.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no proposed changes in the method by which any safety-related plant SSC performs its safety function. The proposed changes will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. The proposed changes will not alter any assumptions made in the safety analyses.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, Solid State Protection System, BOP ESFAS, MSFIS [main steam/feedwater isolation system], or LSELS [load shedder and emergency load sequencer] used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria will continue to be met.

The proposed changes do not eliminate any surveillances or alter the frequency of surveillances required by the Technical Specifications. No instrument setpoints or system response times are affected. None of the acceptance criteria for any accident analysis will be changed.

The proposed changes will have no impact on the radiological consequences of a design basis accident.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 30, 2010.

Description of amendment request: The proposed amendments would modify the North Anna Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program with the implementation of Nuclear Energy Institute (NEI) 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies." The changes

are consistent with NRC-approved Industry Technical Specifications Task Force (TSTF) Standard Technical Specifications (STS) change TSTF–425, Revision 3. The **Federal Register** notice published on July 6, 2009 (74 FR 31996), announced the availability of this TS improvement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, Dominion will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1 in accordance with the TS SFCP. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices, either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: June 25, 2008, as supplemented on November 6, 2008, March 9, 2009, June 12, 2009, December 18, 2009, and March 26, 2010.

Brief description of amendment request: The proposed amendment would revise the PBAPS, Units 2 and 3, Technical Specification Section 4.3.1.1.a concerning the spent fuel pool k-infinity value.

Date of publication of individual notice in **Federal Register**: ***April 26, 2010 (75 FR 21680).***

Expiration date of individual notice: May 26, 2010 (comment request); June 25, 2010 (hearing request).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, *see* (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are

problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: November 23, 2009, as supplemented by letter dated April 26, 2010.

Brief description of amendment: The license amendment request revises the Millstone Power Station, Unit 3 (MPS3) Technical Specification (TS) 6.8.4.g, "Steam Generator Program," to exclude a portion of the tubes below the top of the steam generator tubesheet from periodic steam generator tube inspections. This request also removes reference to the previous Cycle 13 interim alternate repair criteria.

Date of issuance: May 3, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 249.

Renewed Facility Operating License No. NPF–49: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2010 (75 FR 4114). The supplemented dated April 26, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 2010.

No significant hazards consideration comments received: No.

Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 1, 2008.

Brief description of amendments: The amendments correct a non-conservative Technical Specification (TS) Surveillance Requirement by revising McGuire TS 3.8.1.4 to increase the minimum required amount of fuel oil for the Emergency Diesel Generators fuel oil day tank as read on the local fuel gauge used to perform the surveillance.

Date of issuance: May 5, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 254 and 234.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** May 19, 2009 (74 FR 23442).

The supplements dated July 30, 2009, December 2, 2009, and March 10, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 5, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: August 7, 2008, as supplemented on May 7, 2009, and January 19, 2010.

Brief description of amendments: The August 7, 2008, submittal contained several areas of review that are being dispositioned as separate amendment requests. The amendments associated with this notice revise the PBAPS Units 2 and 3 Technical Specifications (TS) to delete the list of emergency diesel generator critical trips from TS Surveillance Requirement (SR) 3.8.1.13 and clarify that the purpose of the SR is to verify that the non-critical trips are bypassed. This TS change adopts Technical Specification Task Force (TSTF) Traveler 400, Revision 1, "Clarify SR on Bypass of DG [diesel generator] Automatic Trips."

Date of issuance: April 30, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 275 and 279.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the License and Technical Specifications.

Date of initial notice in Federal Register: May 5, 2009 (74 FR 20744).

The supplements dated May 7, 2009, and January 19, 2010, clarified the application, did not expand the scope of the application as originally noticed, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 2010.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: April 2, 2009.

Brief description of amendments: The amendment revised Technical Specification (TS) 3.3.1 entitled, "Reactor Trip System (RTS) Instrumentation" to add Surveillance Requirement 3.3.1.16 to Function 3 of TS Table 3.3.1–1 to verify that the RTS response times are within limits every 18 months on staggered basis. The change is based on a reanalysis of the Rod Cluster Control Assembly Bank Withdrawal at Power event.

Date of issuance: April 26, 2010.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1—151; Unit 2–151.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** May 19, 2009 (74 FR 23446).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 2010.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date

the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant

or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 29, 2010, as supplemented by letters dated March 29 and April 26, 2010.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," Condition J under function 6.g in TS Table 3.3.2–1. Function 6.g provides an auxiliary feedwater (AFW) start signal that is provided to the motor-driven AFW pumps in the event of a trip of both turbine-driven main feedwater (MFW) pumps. The licensee determined that the design and normal operation of the MFW pumps could result in a condition that does not conform to TS Table 3.3.2–1, function 6.g. Entry into Limiting Condition for Operation (LCO) 3.0.3 will be required; therefore, the TS change was needed to address this condition. The change to Condition J allows placing the two channels in a tripped condition on one MFW pump when placing the pump into service or removing the pump from service prior to resetting the MFW pump. With the revision to Condition J, the licensee will not require an entry into LCO 3.0.3. Specifically, the changes revised Condition J for ESFAS instrumentation function 6.g to read, "One or more Main Feedwater Pumps trip channel(s) inoperable," made corresponding changes to Required Action J.1, and placed a Note above Required Actions J.1 and J.2 for consistency with the revised Condition.

Date of issuance: May 5, 2010.

Effective date: As of its date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 196.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (75 FR 19431; April 14, 2010).

The supplemental letters dated March 29 and April 26, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed NSHC determination as published in the **Federal Register**. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by June 14, 2010, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated May 5, 2010.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Dated at Rockville, Maryland, this 6th day of May 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–11564 Filed 5–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0180]

Notice of Availability of Draft NUREG–1800, Revision 2; "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants" and Draft NUREG–1801, Revision 2; "Generic Aging Lessons Learned (GALL) Report"

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Issuance of draft NUREG–1800, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants "and draft NUREG–1801, "Generic Aging Lessons Learned (GALL) Report" for public comment; and announcement of public workshop.

SUMMARY: The NRC staff is issuing drafts of the revised NUREG–1800, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants" (SRP–LR); and the revised NUREG–1801, "Generic Aging Lessons Learned (GALL) Report" for public comment. These revised documents describe methods acceptable to the NRC staff for implementing the license renewal rule, Title 10, Code of Federal Regulations Part 54 (10 CFR Part 54), as well as techniques used by the NRC staff in evaluating applications for license renewals. These draft documents supersede the preliminary draft documents that were publicly announced and placed on NRC's Web site at *http://www.nrc.gov/reactors/operating/licensing/renewal/guidance/updated-guidance.html* on December 23, 2009.

The NRC is also announcing a public workshop to facilitate gathering public comments on the drafts of these revised documents. The NRC is especially interested in stakeholder comments that will improve the safety, effectiveness, and efficiency of the license renewal process. There are situations where the draft GALL Report, Revision 2 includes changes that have been previously issued for public comments as part of the staff's license renewal Interim Staff Guidance (ISG) process. In particular, the Aging Management Program (AMP) XI.M40, "Monitoring of Neutron Absorbing Materials Other Than Boraflex" and related Aging Management Review (AMR) line items were processed by ISG LR–ISG–2009–01. Public comments were elicited on the proposed AMP XI.M40 by 74 FRN 62829 dated December 1, 2009. Public comments were received, evaluated by the staff, and the proposed AMP XI.M40, and AMR line items, were revised as determined necessary by the staff. Because the staff has previously sought and received public comments on draft AMP XI.M40, the staff is not seeking further comments on this AMP as part of this **Federal Register** Notice (FRN). AMP XI.M40, and related AMR line items, are considered final by the staff. They have been included in the draft GALL Report, Revision 2 for completeness.

DATES: Comments should be submitted on the draft SRP–LR and the draft GALL Report, accompanied by supporting data, by July 2, 2010. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. A public workshop is planned to be held on May 26–28, 2010, at NRC's headquarters and is announced on the NRC's Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0180 in the subject line of your comments on the draft SRP–LR or the draft GALL Report or both. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.Gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for the draft SRP–LR and the draft GALL Report filed under Docket ID NRC–2010–0180. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The draft SRP–LR, Revision 2, is under ADAMS Accession Number ML101320099. The draft GALL Report, Revision 2, is available under ADAMS Accession Number ML101320104.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gramm, License Renewal Project Manager, Office of Nuclear Reactor Regulation, Mail Stop O–11F1, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–1010, or e-mail *Robert.Gramm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Draft Standard Review Plan for License Renewal, Revision 2

The NRC staff proposes to revise the September 2005 version of NUREG–1800, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants" (SRP–LR). The SRP–LR provides the guidance to NRC staff reviewers in performing safety reviews of applications to renew licenses of nuclear power plants in accordance with the license renewal rule. The draft SRP–LR is being revised to incorporate lessons learned from the review of the recent license renewal applications, as well as to make changes corresponding to the update of the GALL Report. The draft SRP–LR contains four major chapters: (1) Administrative Information; (2) Scoping and Screening Methodology for Identifying Structures and Components Subject to Aging Management Review, and Implementation Results; (3) Aging Management Review Results; and (4) Time-Limited Aging Analyses. In addition, three Branch Technical Positions are in an Appendix to the draft SRP–LR.

Draft Generic Aging Lessons Learned Report, Revision 2

The draft Generic Aging Lessons Learned (GALL) Report, Revision 2, is an update to the September 2005 version. The NRC staff held a public workshop on January 4–7, 2010 to invite early public participation in the development of license renewal guidance documents. The NRC staff made selected chapters of an early draft GALL Report publicly available prior to the public workshop. Prior to the public workshop, the Nuclear Energy Institute (NEI) submitted significant industry comments on the GALL Report, Revision 1. During preparation of the draft GALL Report, Revision 2, the staff considered these and other comments generated since the publication of Rev. 1. The adequacy of the generic aging management programs in managing certain aging effects for particular structures and components are evaluated based on the review of the following ten program elements: (1) Scope of program, (2) preventive actions, (3) parameters monitored or inspected, (4) detection of aging effects, (5) monitoring and trending, (6) acceptance criteria, (7) corrective actions, (8) confirmation process, (9) administrative controls, and (10) operating experience. The GALL Report is a technical basis document for the SRP–LR and should be treated in the same manner as an approved topical report that is applicable generically.

Solicitation of Comments

The comments should include supporting justification in enough detail for the NRC staff to evaluate the need for changes in guidance, as well as references to the operating experience, industry standards, or other relevant reference materials that provide a sound technical basis for such changes. The NRC is also interested in comments that will improve the clarity of the documents so that the improved guidance will provide a stable and predictable evaluation standard for future renewal applications. Editorial and style comments are not necessary because we expect that the guidance documents will need to be reformatted and edited before they are issued in final form.

There are situations where the draft GALL Report, Revision 2 includes changes that have been previously issued for public comments as part of the staff's license renewal Interim Staff Guidance (ISG) process. In particular, the Aging Management Program (AMP) XI.M40, "Monitoring of Neutron Absorbing Materials Other Than Boraflex" and related Aging Management Review (AMR) line items were processed by ISG LR–ISG–2009–01. Public comments were elicited on the proposed AMP XI.M40 by 74 FRN 62829, dated December 1, 2009. Public comments were received, evaluated by the staff, and the proposed AMP XI.M40, and AMR line items, were revised as determined necessary by the

staff. Because the staff has previously sought and received public comments on draft AMP XI.M40, the staff is not seeking further comments on this AMP as part of this FRN. AMP XI.M40, and related AMR line items, are considered final by the staff. They have been included in the draft GALL Report, Revision 2 for completeness.

Public Workshop

A public workshop is scheduled during the public comment period. Scheduled for May 26–28, 2010, this workshop will be held in Room T–2B3 at TWFN, the NRC headquarters. The formal meeting notice is available at *http://www.nrc.gov/public-involve/public-meetings/index.cfm*. It is anticipated that the workshop will provide the participants an opportunity to obtain further information, to ask questions, to make comments to add to the discussion, or otherwise to facilitate the public in formulating and preparing written comments for NRC staff consideration on these revised license renewal guidance documents.

Dated at Rockville, Maryland, this 12th day of May 2010.

For the Nuclear Regulatory Commission.

Samson Lee,

Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–11841 Filed 5–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0080]

NUREG–0654/FEMA–REP–1, Rev. 1, Supplement 3, Guidance for Protective Action Recommendations for General Emergencies; Draft for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft document: extension of comment period.

SUMMARY: On March 8, 2010, (75 FR 10524), the Nuclear Regulatory Commission (NRC) published for public comment a document entitled: "NUREG–0654/FEMA–REP–1, Rev. 1, Supplement 3, Guidance for Protective Action Recommendations for General Emergencies, Draft Report for Comment." When this document is issued for use in final form, it will supersede the existing guidance contained in Supplement 3 to NUREG–0654/FEMA–REP–1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," which was issued in draft form for interim use and guidance in 1996. A 75-day comment period was provided for this draft document, set to expire on May 24, 2010.

DATES: The comment period for the draft document has been extended from the original May 24, 2010, deadline to August 9, 2010. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0080 in the subject line of your comments. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2010–0080]. Address questions about NRC dockets to Carol Gallagher, telephone (301) 492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Chief, Rulemaking, Announcements and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or (301) 415–4737, or by e-mail to *PDR.Resource@nrc.gov*. NUREG–0654/FEMA–REP–1, Rev. 1, Supplement 3, "Guidance for Protective Action Recommendations for General Emergencies, Draft Report for Comment" is available electronically under ADAMS Accession Number ML100150268.

FOR FURTHER INFORMATION CONTACT: Randy Sullivan, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1123, e-mail: *randy.sullivan@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC received comments from external stakeholders requesting that the public comment period on this draft document be extended. In view of the NRC's desire to receive high quality comments from stakeholders, the comment period for the document will be extended for an additional 75 days. Based on feedback from stakeholders, the NRC believes that a 75-day extension will allow sufficient time for all stakeholders to develop and provide meaningful comments on this document.

The draft document comment submittal deadline is extended from the original May 24, 2010, deadline to August 9, 2010.

Dated at Rockville, Maryland this 11th day of May 2010.

For the Nuclear Regulatory Commission.

Robert E. Kahler,

Chief, Inspection and Regulatory Improvements Branch Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2010–11842 Filed 5–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on May 18, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Tuesday, May 18, 2010—8:30 a.m. until 12 p.m.

The Subcommittee will discuss the Rulemaking on 10 CFR part 40 (Proposed Rulemaking on Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions) amending 10 CFR parts 30, 40, 70, 170, and 171. These proposed amendments

add new specific licensing requirements, reporting requirements, and fees for the initial distribution of products and materials containing source material for receipt under an exemption or the general license in § 40.22, "Small quantities of source material." Source material is uranium and thorium or ores containing uranium and thorium in concentrations greater than 0.05 percent by weight of the uranium or thorium. In addition, the proposed amendments modify the existing possession and use requirements for the general license in § 40.22 to better align the requirements with current health and safety standards. Finally, the proposed amendments revise, clarify, or delete certain licensing exemptions (also known as "unimportant quantities") in order to make the requirements for those exemptions more risk informed.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, stakeholders, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Neil Coleman (Telephone 301–415–7656 or E-mail *Neil.Coleman@NRC.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: May 6, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–11823 Filed 5–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on EPR

The ACRS Subcommittee on EPR will hold a meeting on May 21, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, May 21, 2010, 8:30 a.m.–5 p.m.

The Subcommittee will review Chapter 19 of the Calvert Cliffs combined operating license (COL) Safety Evaluation Report (SER) with Open Items. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Derek Widmayer (Telephone 301–415–7366 or E-mail *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: May 6, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–11825 Filed 5–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on May 18, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 18, 2010—1 p.m. until 5 p.m.

The Subcommittee will review two new staff guidance documents concerning the tritium groundwater issues: ISG–13, "Accidental Release of Radioactive Materials from Liquid Waste Tanks," and ISG–14, "Assessing Groundwater Flow and Transport of Accidental Radionuclide Releases." The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, NEI, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as

appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Derek Widmayer (Telephone 301–415–7366 or E-mail *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: May 6, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–11820 Filed 5–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS; Subcommittee on ABWR

The ACRS Subcommittee on ABWR will hold a meeting on May 20, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance except for portions that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, May 20, 2010—8:30 a.m. until 5 p.m.

The purpose of this meeting is to review Chapters 7 and 14 of the Safety Evaluation Report with Open Items associated with the combined license application for South Texas Project Units 3 and 4. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the South Texas Project Nuclear Operating Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Ms. Maitri Banerjee (Telephone 301–415–6973 or Email *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: May 6, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–11821 Filed 5–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License to Export Radioactive Waste

Pursuant to 10 CFR 110.70 (b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.rnc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this export license application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application no., docket no.	Description of material		End use	Recipient country
	Material type	Total quantity		
Duratek Services, Inc. (a subsidiary of EnergySolutions), April 19, 2010, April 21, 2010, XW017, 11005826.	Class A radioactive waste in the form of contaminated dry active materials generated during refurbishment of a nuclear reactor Heat Transport Impellor and Cover from Ontario Power Generation's Pickering Station.	Approximately 680 pounds (53 cubic feet) of dry active materials.	Storage or disposal by the original generator, as required or authorized by their regulator.	Canada.

Dated this 10th day of May 2010 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Deputy Director, Office of International Programs.

[FR Doc. 2010–11822 Filed 5–17–10; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

June 24, 2010 Board of Directors Meeting

Time and Date: Thursday, June 24, 2010, 10 a.m. (Open Portion); 10:15 a.m. (Closed Portion)

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Meeting Open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.)

Matters to be Considered:

1. President's Report
2. Approval of March 31, 2010 Minutes (Open Session)

Further Matters to be Considered: (Closed to the Public 10:15 a.m.)

1. Finance Project—Middle East, North Africa, Central and South Asia, Pakistan, Sri Lanka, Tajikistan, Turkey, Turkmenistan, Uzbekistan, Nepal
2. Finance Project—Middle East and North Africa
3. Finance Project—Levant and North Africa
4. Finance Project—Palestine
5. Finance Project—Middle East and North Africa
6. Finance Project—North and East Africa
7. Finance Project—Pakistan
8. Finance Project—West Africa
9. Finance Project—Southeast Asia
10. Finance Project—Brazil, Chile, Colombia, Costa Rica
11. Approval of March 31, 2010 Minutes (Closed Session)
12. Pending Major Projects
13. Reports

Written summaries of the projects to be presented will be posted on OPIC's Web site on or about February 24, 2010.

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 14, 2010.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2010–11989 Filed 5–14–10; 4:15 pm]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

June 10, 2010 Public Hearing

Time and Date: 2 p.m., Thursday, June 10, 2010.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing open to the Public at 2 p.m.

Purpose: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures:

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Thursday, June 3, 2010. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Thursday, June 3, 2010. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the June 24, 2010 Board meeting will be posted on OPIC's Web site on or about Thursday, May 20, 2010.

Contact Person for Information: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *connie.downs@opic.gov.*

Dated: May 14, 2010.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2010–11990 Filed 5–14–10; 4:15 pm]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010–48 and CP2010–49; Order No. 459]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service filing to add new Global Expedited Package Services 2 products to the Competitive Product List. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: May 19, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On May 7, 2010, the Postal Service filed a notice announcing that it has entered into two additional Global Expedited Package Services 2 (GEPS 2) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS 2 contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1. In Order No. 290, the Commission approved the GEPS 2 product.[2]

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 2–3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachments 1A and 1B—redacted copies of the two contracts and applicable annexes;
- Attachments 2A and 2B—a certified statement required by 39 CFR 3015.5(c)(2) for each of the two contracts;
- Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 2 contracts fit within the Mail Classification Schedule language for GEPS 2. The Postal Service identifies customer-specific information, general contract terms and other differences that distinguish the instant contracts from the baseline GEPS 2 agreement, all of which are highlighted in the Notice. *Id.* at 3–6. These modifications as described in the Postal Service's Notice apply to each of the instant contracts.

The Postal Service contends that the instant contracts are functionally equivalent to the GEPS 2 contracts filed previously notwithstanding these differences. *Id.* at 6–7.

The Postal Service asserts that several factors demonstrate the contracts' functional equivalence with previous GEPS 2 contracts, including the product being offered, the market in which it is offered, and its cost characteristics. *Id.* at 3. The Postal Service concludes that because the GEPS agreements "incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same." despite any incidental differences. *Id.* at 6.

The Postal Service contends that its filings demonstrate that each of the new GEPS 2 contracts complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to previous GEPS 2 contracts. It also requests that the contracts be included within the GEPS 2 product. *Id.* at 7.

II. Notice of Filing

The Commission establishes Docket Nos. CP2010–48 and CP2010–49 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this Order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633 or 3642. Comments are due no later than May 19, 2010. The public portions of these filings can be accessed via the Commission's website (www.prc.gov).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2010–48 and CP2010–49 for consideration of matters raised by the Postal Service's Notice.
2. Comments by interested persons in these proceedings are due no later than May 19, 2010.
3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–11771 Filed 5–17–10; 8:45 am]

BILLING CODE 7710–FW–S

[1] Notice of United States Postal Service Filing of Two Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreements and Application for Non-Public Treatment of Materials Filed Under Seal, May 7, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12157 and #12158]

Alabama Disaster Number AL–00031

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–1908–DR), dated 05/03/2010.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/24/2010 through 04/25/2010.

DATES: *Effective Date:* 05/07/2010.

Physical Loan Application Deadline Date: 07/02/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/03/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Alabama, dated 05/03/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Walker.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11744 Filed 5–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12163]

Louisiana Disaster #LA–00032 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of an Economic Injury Disaster Loan (EIDL) declaration for the State of Louisiana, dated 05/10/2010.

Incident: Deepwater BP Oil Spill.

Incident Period: 04/20/2010 and continuing.

DATES: *Effective Date:* 05/10/2010.

EIDL Loan Application Deadline Date: 02/07/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of an Economic Injury declaration for the State of Louisiana dated 05/05/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Parishes:

Ascension, East Feliciana, Evangeline, Iberia, Livingston, Saint Charles, Saint Martin, Tangipahoa, Terrebonne, Washington

Contiguous Parishes and Counties:

Louisiana: Acadia, Allen, Avoyelles, East Baton Rouge, Iberville, Jefferson Davis, Lafayette, Pointe Coupee, Rapides, Saint Helena, Saint Landry, Saint Mary, Vermilion, West Baton Rouge, West Feliciana

Mississippi: Amite, Marion, Pike, Walthall, Wilkinson

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: May 10, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–11747 Filed 5–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12161 and #12162]

Tennessee Disaster Number TN–00038

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–1909–DR), dated 05/04/2010.

Incident: Severe Storms, Flooding, Straight-Line Winds and Tornadoes.

Incident Period: 04/30/2010 and continuing.

DATES: *Effective Date:* 05/08/2010.

Physical Loan Application Deadline Date: 07/06/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/04/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Tennessee, dated 05/04/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Chester, Clay, Dekalb, Hardin, Jackson, Lauderdale, Lawrence, Lewis, Macon, Robertson, Smith, Stewart, Trousdale, Wayne, Wilson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11749 Filed 5–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12107 and #12108]

New Jersey Disaster Number NJ–00014

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1897–DR), dated 04/02/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 Through 04/15/2010.

Effective Date: 05/07/2010.

Physical Loan Application Deadline Date: 06/01/2010.

EIDL Loan Application Deadline Date: 01/03/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New Jersey, dated 04/02/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Burlington, Cumberland, Ocean.

All other counties contiguous to the above named primary counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11751 Filed 5–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12109 and #12110]

New Jersey Disaster Number NJ–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–1897–DR), dated 04/02/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 through 04/15/2010.

Effective Date: 05/07/2010.

Physical Loan Application Deadline Date: 06/01/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of NEW JERSEY, dated 04/02/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Cumberland, Gloucester, Hunterdon, Ocean.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11750 Filed 5–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12159 and #12160]

Tennessee Disaster Number TN–00039

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1909–DR), dated 05/04/2010.

Incident: Severe Storms, Flooding, Straight-line Winds, and Tornadoes.

Incident Period: 04/30/2010 and continuing.

DATES: *Effective Date:* 05/08/2010.

Physical Loan Application Deadline Date: 07/06/2010.

EIDL Loan Application Deadline Date: 02/04/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Tennessee, dated 05/04/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Chester, Clay, Dekalb, Hardin, Jackson, Lauderdale, Lawrence, Lewis, Macon, Robertson, Smith, Stewart, Trousdale, Wayne, Wilson.

Contiguous Counties: (Economic Injury Loans Only):

Tennessee: Overton, Pickett, Putnam, Warren, White.

Alabama: Lauderdale.

Kentucky: Calloway, Clinton, Cumberland, Logan, Monroe, Trigg.

Mississippi: Tishomingo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11748 Filed 5–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12166 and #12167]

California Disaster # CA–00155

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–1911–DR), dated 05/07/2010.

Incident: Earthquake.

Incident Period: 04/04/2010 and continuing.

Effective Date: 05/07/2010.

Physical Loan Application Deadline Date: 07/06/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/07/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/07/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Imperial.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ..	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 121662 and for economic injury is 121672.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11746 Filed 5–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12155 and #12156]

Alabama Disaster Number AL–00029

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1908–DR), dated 05/03/2010.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/24/2010 through 04/25/2010.

Effective Date: 05/07/2010.

Physical Loan Application Deadline Date: 07/02/2010.

EIDL Loan Application Deadline Date: 02/03/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Alabama, dated 05/03/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Walker.

Contiguous Counties (Economic Injury Loans Only):

Alabama: Fayette, Jefferson, Marion, Tuscaloosa, Winston.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11745 Filed 5–17–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Broadengate Systems, Inc., (n/k/a Otter Lake Resources, Inc.); Order of Suspension of Trading

May 14, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Broadengate Systems, Inc. (n/k/a Otter Lake Resources, Inc.) because it has not filed any periodic reports since the period ended September 30, 2002.

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 company. 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 company is suspended for the period from 9:30 a.m. EDT on May 14, 2010 and terminating at 11:59 p.m. EDT on May 27, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–11953 Filed 5–14–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

China Technology Global Corp.; Order of Suspension of Trading

May 14, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Technology Global Corp. because it has not filed any periodic reports since the period ended March 31, 2005.

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 company. 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 company is suspended for the period from 9:30 a.m. EDT on May 14, 2010 and terminating at 11:59 p.m. EDT on May 27, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–11952 Filed 5–14–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62074; File No. SR–BATS–2010–012]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

May 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to Members[5] of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange in order to amend the fees for its BATS + NYSE destination specific routing option to continue to offer a "one under" pricing model.

The Exchange has previously provided a discounted price fee for Destination Specific Orders routed to certain of the largest market centers measured by volume (NYSE, NYSE Arca and NASDAQ), which, in each instance has been $0.0001 less per share for orders routed to such market centers by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Based on changes in pricing at NYSE, BATS is proposing a change to its price for BATS + NYSE Destination Specific Orders to align its fees so they are $0.0001 less per share for orders routed to NYSE. Specifically, the Exchange proposes to increase the fee charged for BATS + NYSE Destination Specific Orders executed at NYSE from $0.0017 to $0.0020 per share. This change will result in the Exchange charging $0.0001 less per share for orders routed to NYSE as Destination Specific Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–BATS–2010–012 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 No. SR–BATS–2010–012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing 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 No. SR–BATS–2010–012 and should be submitted on or before June 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11807 Filed 5–17–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62082; File No. SR–NYSE–2010–34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Price List

May 11, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act"),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 30, 2010, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of the fees and credits set forth in its 2010 Price List. The amended pricing will take effect on May 1, 2010.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] *See* Email from John Carey, Chief Counsel, U.S. Equities, NYSE Euronext, to David Liu, Assistant Director, Nathan Saunders, Special Counsel, and Daniel Gien, Attorney, Division of Trading and Markets, Commission, dated May 6, 2010 (clarifying the language of note 6 below and making other minor technical changes to conform the description of the changes to the text of the proposed rule text).

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), on the Commission's Web site at *http://www.sec.gov,* at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make the following changes to its 2010 Price List with effect from May 1, 2010:

- The rebate paid for executions in which the customer adds liquidity to the Exchange will increase from $0.0010 to $0.0013 per share.
- The rebate paid for executions of orders sent to the floor broker for representation on the NYSE when adding liquidity to the Exchange will increase from $0.0012 to $0.0015 per share.
- The equity per share charge when taking liquidity from the Exchange will increase from $0.0018 to $0.0021 per share.
- The equity per share charge (charged to both sides) for all odd lot transactions (including odd lot portions of partial round lots) will increase from $0.0018 to $0.0021 per share. A parallel change will be made to the odd lot transaction charges for securities with a per share trading price less than $1.00, which will now be subject to a fee equal to the lesser of (i) 0.3% of the transaction value or (ii) $0.0021 per share.
- Currently, the Exchange charges $0.0006 per share for all market at-the-close ("MOC") and limit at-the-close ("LOC") orders for all executions of orders from any member organization executing an average daily trading volume ("ADV") on the NYSE in that month of at least 130 million shares, including (i) adding liquidity in an ADV of at least 30 million shares and (ii) an ADV of at least 15 million shares total in MOC and LOC orders. The Exchange is eliminating this separate pricing tier and will now charge $0.0007 per share for all MOC and LOC transactions, which is the price currently charged for all such transactions that do not qualify for the $0.0006 per share tier described in the previous sentence. A parallel change will be made to the transaction charges for MOC and LOC orders in securities with a per share stock price less than $1.00. All such transactions will now be subject to a fee equal to the lesser of (i) 0.3% of the transaction value or (ii) $0.0007 per share.
- Currently, the Exchange charges $0.0017 per share for executions of orders from any member organization executing an average daily trading volume ("ADV") on the NYSE in that month of at least 130 million shares, including (i) adding liquidity in an ADV of at least 30 million shares and (ii) an ADV of at least 15 million shares total in MOC and LOC orders. The Exchange is eliminating this separate pricing tier and will now charge the regular transaction fee for these transactions that applies to executions taking liquidity from the Exchange. Therefore, all transactions taking liquidity from the NYSE in securities with a per share stock price of $1.00 or more will be subject to a fee of $0.0021 per share and all such transactions in securities with a per share stock price less than $1.00 will be subject to a fee equal to the lesser of (i) 0.3% of the transaction value or (ii) $0.0021 per share.[5]
- The equity per share charge for designated market makers ("DMMs") for transactions taking liquidity from the NYSE will be increased from $0.0010 per share to $0.0013 per share.
- The Exchange is modifying its schedule of liquidity rebates for supplemental liquidity providers ("SLPs").[6] SLPs will receive a credit of $0.0020 per share when they add liquidity to the NYSE in securities with a per share price of $1.00 or more, and the SLP (i) meets the 3% average or more quoting requirement in an assigned security pursuant to Rule 107B (the "Quoting Requirement") and (ii) adds liquidity of an ADV of more than 10 million shares in the applicable month. For all other transactions adding liquidity to the NYSE, SLPs will receive a rebate of $0.0013 per share.
- SLPs currently receive a rebate of $0.0005 per share for executions of securities with a per share price of $1.00 or more at the close. This rebate will no longer be paid, although these transactions will continue to be free of charge.
- The Exchange is instituting a new $0.0001 per share fee for executions in Crossing Session II. This fee will be subject to a $50,000 per month cap per member organization.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6[7] of the Act in general and furthers the objectives of Section 6(b)(4)[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges, as all similarly situated member organizations will be charged the same schedule of fees and be entitled to receive the same rebates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[5] Some superfluous language is also removed from this entry in the Price List and the same language is removed from the entry specifying the fee paid by DMMs when taking liquidity.

[6] The Exchange currently has a three tier structure of rebates paid only to SLPs when the SLP provides liquidity to the NYSE and meets the requirements to benefit for the specific tier. The highest tier pays a credit of $0.0017 per share to SLPs when they add liquidity to the NYSE in securities with a per share price of $1.00 or more, and the SLP (i) meets the Quoting Requirement and (ii) adds liquidity of an ADV of more than 250 million shares in the applicable month. The second-highest tier pays a credit of $0.0016 per share to SLPs and applies to SLPs when they add liquidity to the NYSE in securities with a per share price of $1.00 or more, and the SLP (i) meets the Quoting Requirement and (ii) adds liquidity of an ADV of more than 100 million shares in the applicable month. The third-highest tier pays a credit of $0.0015 per share to SLPs and applies to SLPs when they add liquidity to the NYSE in securities with a per share price of $1.00 or more, and the SLP (i) meets the Quoting Requirement and (ii) adds liquidity of an ADV of more than 10 million shares in the applicable month. SLPs adding liquidity in securities with a per share price of $1.00 or more, if the SLP does not qualify for any of the foregoing rebates, receive the same rebates as other market participants.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and Rule 19b–4(f)(2) [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to *rule-comments@* Please include File Number SR–NYSE–2010–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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–NYSE–2010–34 and should be submitted on or before June 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11809 Filed 5–17–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62083; File No. SR–CBOE–2010–038]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Related to the Hybrid Matching Algorithms

May 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that April 22, 2010, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 6, 2010, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System,* and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System,* to revise its market turner and modified participation entitlement priority overlays. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which incoming electronic orders in options are allocated on the Hybrid System. Paragraph (a) of each rule currently provides a "menu" of allocation algorithms to choose from when executing incoming electronic orders. The menu format allows the Exchange to utilize different allocation algorithms on a class-by-class basis. The menu includes, among other choices, the Ultimate Matching Algorithm ("UMA"),[3] and price-time and pro-rata priority allocation algorithms. Additional priority overlays can be applied to the base allocation algorithms. The price-time and pro-rata priority overlays currently include: public customer priority for public customer orders resting on the Hybrid System, participation entitlements for certain qualifying market-makers [4] (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under the UMA algorithm, public customer orders in the electronic book have first priority to trade against incoming electronic orders, then the Market-Maker participation entitlement has second priority. Thereafter, any remaining balance of the incoming order, if any, is allocated among other market participants based on a weighting of the number of market participants quoting at the best bid or offer (Component A) and the percentage that the size of each market participant's quote is at the best bid or offer relative to the total number of contracts at the disseminated quote (Component B). *See* Rules 6.45A(a)(i)(B)(2) and 6.45B(a)(ii)(B)(2) for a more detailed description of UMA.

[4] Under the original participation entitlement, the Exchange may determine to grant Market-Makers participation entitlements pursuant to the provisions of Rules 8.87, *Participation Entitlement of DPMs and e-DPMs,* 8.13, *Preferred Market-Maker Program,* or 8.15B, *Participation Entitlement of*

"original participation entitlement(s)") [5] and a market turner priority for participants that are first to improve CBOE's disseminated quote. In addition, a small order participation entitlement overlay for Designated Primary Market-Makers ("DPMs") and Lead Market-Makers ("LMMs") can be applied to each of the three allocation algorithms (*i.e.,* price-time, pro-rata or UMA).[6] These overlays are all optional.

The Exchange recently adopted another priority overlay for the price-time and pro-rata allocation algorithms that the Exchange refers to as the "modified participation entitlement." [7] The modified participation entitlement currently operates in the same manner as the original participation entitlement(s) with a few exceptions. In particular, the modified participation entitlement provides that, if at the time of execution of an inbound order there are no Public Customer orders resting at the best price or a Public Customer was the first to rest interest at the best price, then the original participation entitlement(s) will be applied. In all other cases, participation entitlement and public customer priority overlays will not be in effect. This modified participation entitlement overlay is only applicable to automatic executions and is not applicable for auctions. Lastly, like the other priority overlays, the modified participation entitlement is optional. The Exchange can determine whether one or more of the priority overlays shall apply to an option class and if more than one is selected, the sequence in which they shall apply (consistent with applicable rules). All determinations are set forth in a regulatory circular.

Amendments to Market Turner and Modified Participation Entitlement Priority Overlays

The purpose of this rule change is to revise the market turner and modified participation entitlement priority overlays in various respects described below. First, currently the rules provide that the market turner priority overlay is only available for classes utilizing the price-time and pro-rata algorithms. The Exchange is now proposing to amend the rules to make this entitlement overlay available for classes utilizing any of the priority methods utilized by the Exchange.

Second, currently the modified participation entitlement overlay available for the price-time and pro-rata priority methods is only applicable to automatic executions of incoming electronic orders. It is not applicable to electronic auctions. The Exchange is also proposing to provide that the modified participation entitlement overlay would not be applicable for executions of incoming electronic orders initiated from PAR.[8] Instead, as described in more detail below, the original participation entitlement parameters would be applied when PAR is used to initiate an execution of an electronic order.[9] Thus, this outcome would be no change from how the original participation entitlement(s) works today when PAR is utilized.

Third, currently the modified participation entitlement overlay available for the price-time and pro-rata priority methods only modifies the application of the original participation entitlement. It does not modify the application of the small order participation entitlement for DPMs and LMMs. The Exchange is proposing to provide that the modified participation entitlement overlay would also be available to modify the application of the small order participation entitlement.

Fourth, currently under the modified participation entitlement overlay available for options classes utilizing the price-time or pro-rata method, a participation entitlement(s) is only applied if there are no Public Customer orders resting at the best price or if a Public Customer was the first to rest interest at the best price. In all other cases, the participation entitlement and public customer priority overlays are not in effect for the allocation of incoming electronic orders.

The Exchange is proposing to replace this provision with what we refer to as the "greater than" provision. Under this provision, a Market-Maker that is the subject of a participation entitlement (including a small order participation entitlement) would only receive an entitlement if the amount the Market-Maker would be entitled to pursuant to the participation entitlement is greater than the amount the Market-Maker would otherwise receive pursuant to the operation of the algorithm. In all other cases, the participation entitlement and public customer priority would not be applied. This allocation would be subject to the following:

- The Market-Maker's entitlement share would be calculated based on any remaining balance after all public customer orders at the best price are satisfied. For options classes using the pro-rata method, the Exchange may determine on a class-by-class basis to calculate the Market-Maker's entitlement share using the UMA methodology or the pro-rata methodology. For options classes using

LLMs. More than one such participation entitlements may be activated for an option class (including at different priority sequences), however in no case may more than one participation entitlement be applied on the same trade. In allocating the participation entitlement, all of the following apply: (i) To be entitled to their participation entitlement, the Market-Maker's order and/or quote must be at the best price on the Exchange. (ii) The Market-Maker may not be allocated a total quantity greater than the quantity that it is quoting (including orders not part of quotes) at that price. If pro-rata priority is in effect, and Market-Maker's allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted, the Market-Maker shall not receive any further allocation of that order. (iii) In establishing the counterparties to a particular trade, the participation entitlement must first be counted against that Market-Maker's highest priority bids or offers. (iv) The participation entitlement shall not be in effect unless the public customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance. *See* Rules 6.45A(a)(ii)(2) and 6.45B(a)(i)(2).

[5] The terms of the original participation entitlement(s) vary depending on the particular base allocation algorithm. For UMA classes, the Market-Maker receives an allocation that is either (i) The greater of the amount the Market-Maker would be entitled to pursuant to the participation entitlement or the amount it would otherwise receive pursuant to the operation of the UMA algorithm, (ii) the amount the Market-Maker would be entitled to pursuant to the participation entitlement or (iii) in index and ETF option classes, the amount the Market-Maker would be entitled to receive pursuant to the operation of the UMA algorithm. The Exchange determines which of the various entitlement formulas will be in effect on a class-by-class basis. Also, under formulas (i) and (ii) above, additional "Component A" allocations are provided to certain On-Floor DPMs and On-Floor LMMs. *See* Rules 6.45A(a)(i)(C) and 6.45B(a)(ii)(C). For pro-rata classes, the Market-Maker would receive a participation that is the greater of its participation entitlement or its pro-rata allocation share. For price-time classes, the Market-Maker would receive a participation entitlement and a time priority share on any remaining balance. Whether UMA, pro-rata, or price-time priority is in effect for an options class, each allocation calculation is based on any remaining balance of the incoming order after public customer priority is applied, as well as after any other higher ranked priority overlay, such as market turner priority, is applied.

[6] If the small order priority overlay is in effect for an option class, then orders for five (5) contracts or fewer will be executed first by the DPM or LMM, as applicable, appointed to the option class. This participation entitlement is subject to certain conditions, including a condition that public customer priority must be in effect in priority sequence ahead of the participation entitlement. *See* Rules 6.45A(a)(iii) and 6.45B(a)(iii).

[7] Securities Exchange Act Release No. 60665 (September 14, 2009), 74 FR 4814 [sic] (September 21, 2009) (SR–CBOE–2009–052).

[8] PAR is utilized to accommodate trading in open outcry, where different rules on electronic book priority apply. For example, in open outcry at the same price, public customer orders in the electronic book have first priority, bid (offers) of in-crowd market participants have second priority, and bids (offers) of broker-dealer orders in the electronic book and electronic quotes of Market-Makers have third priority. *See, e.g.,* Rules 6.45A(b) and 6.45B(b).

[9] *See* note 10, *infra.*

the price-time method, the Market-Maker's entitlement share would be calculated using the price-time methodology only.[10]

• When calculating the amount the Market-Maker would otherwise receive pursuant to the operation of the algorithm, the participation entitlement and public customer priority overlays would not be considered. Instead the calculation would be based on a price-time or pro-rata basis, as applicable, and subject to any other applicable priority overlays, such as market turner priority.

The following example illustrates some outcomes when using CBOE's existing allocation algorithms and when using the proposed modified participation entitlement. Assume that an incoming electronic order for 24 contracts is received and that the following trading interest is represented at the execution price: three Market-Makers for 10 contracts each, the DPM for 40 contracts, and a public customer for 10 contracts.

• In a class where the algorithm is simply pro-rata, each Market-Maker is allocated 3 contracts, the DPM is allocated 12 contracts, and the public customer is allocated 3 contracts.

• In a class where the algorithm is pro-rata with original DPM entitlement and public customer priority overlays, the public customer is allocated 10 contracts, the DPM is allocated 8 contracts (14 contracts remaining after the public customer order * greater of 30% or 40/70), and each Market-Maker is allocated 2 contracts.

• In a class where the algorithm is pro-rata with the proposed modified DPM entitlement overlay (and the DPM entitlement is calculated based on the pro-rata method), the allocation would be simple pro-rata because the DPM's pro-rata share of 12 contracts (24 contracts * pro-rata share of 40/80) is greater than the DPM's entitlement share of 8 contracts (14 contracts remaining after the public customer order * greater of 30% or 40/70). Therefore, each Market-Maker would be allocated 3 contracts, the DPM would be allocated 12 contracts, and the public customer would be allocated 3 contracts.

• In a class where the algorithm is pro-rata with the proposed modified DPM entitlement overlay (and the DPM entitlement is calculated based on UMA using a 0% Component A weighting and a 100% Component B weighting),[11] the allocation would be simple pro-rata because the DPM's pro-rata share of 12 contracts (24 contracts * pro-rata share of 40/80) is greater than the DPM's UMA entitlement share of 8 contracts (14 contracts remaining after the public customer order * greater of 30% or 40/70). Therefore, each Market-Maker would be allocated 3 contracts, the DPM would be allocated 12 contracts, and the public customer would be allocated 3 contracts.[12]

As illustrated above, the outcomes that would result when the modified participation entitlement is activated in a class are not novel or unique. Each outcome is an allocation that is currently permitted under CBOE's existing allocation rules. Specifically:

• For classes using a price-time methodology, the resulting allocation would be either a simple price-time allocation or a price-time allocation with a participation entitlement after yielding to all public customer orders at the best price; and

• For classes using a pro-rata methodology, the resulting allocation would be either a simple pro-rata allocation, a pro-rata allocation with a participation entitlement after yielding to all public customer orders at the best price or, if applicable, an UMA allocation with a participation entitlement after yielding to all public customer orders at the best price.

Put another way, the allocation that occurs when a modified participation entitlement is applied would be no change from how the allocation operates under the existing rules for a class utilizing the original participation entitlement (and small order participation entitlement). Specifically, if the amount the Market-Maker would be entitled to pursuant to the participation entitlement is greater than the amount the Market-Maker would otherwise receive pursuant to the operation of the algorithm, then the participation entitlement allocation share will continue to be calculated based on any remaining balance of the incoming order after public customer priority and any other priority overlay ranked ahead of the entitlement. When calculating the amount the Market-Maker would otherwise receive pursuant to the operation of the algorithm, the resulting allocation would be no change from how the allocation would operate under the existing rules for a class utilizing a simple price-time or pro-rata algorithm. Specifically, the Hybrid System will calculate the Market-Maker's price-time or pro-rata share, as applicable, without regard to any public customer priority or participation entitlement priority (because public customer priority would not be applied when a participation entitlement is not applied). Any other higher ranked priority overlays, such as market turner priority, will be considered in determining the balance of the incoming order to be allocated under the price-time or pro-rata algorithms, as applicable.

The notion of a "greater than" concept for determining the participation entitlement amount is also not novel or unique.[13] The primary distinction with the instant proposal is that, under the original participation entitlement, public customer priority must be applied in a priority sequence ahead of the participation entitlement at all times for the entitlement to be in effect. Under the modified participation entitlement, public customer priority will not be "hardcoded" into the algorithm methodology—instead the participation entitlement and public customer priority will only be applied if the entitlement share is greater than the price-time or pro-rata share, as applicable, and subject to any other applicable priority overlays, such as market turner priority. This distinction

[10] This modified participation entitlement overlay would only be applicable to automatic executions and would not be applicable for executions of incoming electronic orders initiated from PAR or from electronic auctions. Instead, the original participation entitlement parameters would be applied for PAR and electronic auctions. In pro-rata classes where the UMA method is selected to calculate the Market-Maker's modified participation entitlement share, executions of incoming electronic orders initiated from PAR and electronic auctions would be allocated using the UMA method. Therefore, in such classes, the Market-Maker's original participation entitlement share of a PAR or electronic auction execution would be calculated using the UMA method.

[11] For purposes of this example, assume that the original DPM participation entitlement is based on the greater of the amount the DPM would be entitled to pursuant to the participation entitlement or the amount it would otherwise receive pursuant to the operation of the UMA algorithm. *See* note 5, *supra.*

[12] As another example, assume that an incoming electronic order for 4 contracts is received and that the following trading interest is represented at the execution price: three Market-Makers for 10 contracts each, the DPM for 40 contracts, and a public customer for 10 contracts. In a class where the algorithm is pro-rata with the proposed modified participation entitlement for small orders, the allocation would be simple pro-rata because the DPM's pro-rata share 2 contracts (4 contracts * pro-rata share of 40/80) is greater than the DPM's small order preference entitlement share of 0 contracts (0 contracts remaining after the public customer order * 100%).

[13] For example, a CBOE Market-Maker gets the greater of its UMA share (price-time or pro-rata share, if applicable) or entitlement share. *See* CBOE Rules 6.45A(a)(i) and (ii) and 6.45B(a)(i) and (ii). On NYSE Arca, Inc. ("Arca"), an LMM or directed option market maker ("DOMM") gets the greater of its price-time share or, subject to public customer priority, entitlement share. *See* Arca Rule 6.76A(a). On the International Securities Exchange, LLC ("ISE"), an primary market maker or preferred market maker gets the greater of its pro-rata share or entitlement share, which is applied after priority customers but based on the total order size (as opposed to size remaining after priority customers are satisfied). *See* ISE Rule 713.01 and .03.

itself is not entirely novel or unique. In this regard, the Exchange notes, for example, that the price-time algorithm being proposed is substantially similar to what currently exists on at least one other options exchange, except that CBOE would propose to yield to all public customer orders at the same price when a Market-Maker participation entitlement is applied (not just public customer orders received in time sequence ahead of the Market-Maker receiving the entitlement).[14]

The Exchange notes that the Commission has stated that priority of public customer orders is not an essential attribute of an exchange and in the past the Commission has approved trading rules at options exchanges that do not give priority to public customers that are priced no better than the orders of other market participants.[15] Indeed, the Exchange's price-time and pro-rata methodologies discussed above are examples of allocation methodologies that do not require public customer priority. However, when an entitlement applies (such as the Market-Maker participation entitlement or a crossing entitlement), the Commission has had a general policy for the options exchanges to require yielding to all public customers at the same price before the entitlement can be applied.[16] CBOE's proposed amendments to the modified participation entitlement are entirely consistent with this policy objective—before any entitlement can be applied, all public customer orders at the best price must be satisfied. There is no requirement that public customer priority be "hardcoded" on every allocation, only those allocations where an entitlement is applied.[17]

The Exchange believes that public customers will be treated equitably and fairly under the proposed rule change. We are proposing to apply a general allocation algorithm where all market participants are treated equally (*i.e.*, price-time or pro-rata, as applicable, and subject to any other applicable priority overlays, such as market turner priority) and, to the extent a Market-Maker participation entitlement is applied, to apply the entitlement only after all public customer orders at the same price have been satisfied. The proposed amendments to the modified participation entitlement do not serve to in any way disadvantage public customers or advantage other market participants over public customers. In fact, the proposed amendments actually favor public customers because they receive an added benefit if any entitlement is applied (*i.e.,* they are completely satisfied with a 100% fill) when public customers would otherwise only receive a price-time or pro-rata share like any other market participant. Moreover, the Exchange believes that the modified participation entitlement, as amended, would encourage quote competition because is designed to reward aggressive pricing by offering incentives both for Market-Makers to support and participate in the CBOE marketplace and for market participants to establish the best price or quote at the best price with size. In classes utilizing a price-time algorithm with a modified participation entitlement, all market participants (including public customers) are incented to compete by establishing the best price. In classes utilizing a pro-rata algorithm with a modified participation entitlement, all market participants (including public customers) are incented to compete by quoting more size.

With each incoming electronic order, public customers can expect to receive their respective price-time or pro-rata share (same as other market participants) or, in some cases, a 100% fill.[18] To the extent that public customers may strategically rest orders based on the allocation algorithm employed at a given exchange,[19] public customers can adjust their "quoting" behavior accordingly, similar to how they and other market participants already would do today. Several market characteristics factor into a market participant's quoting behavior including, but certainly not limited to, the applicable fee structure, average incoming order size, and the average touch rate (*i.e.*, average allocation a market participant actually receives on incoming electronic orders). The allocation for any market participant (including public customers) changes constantly from order-to-order, second-to-second for various reasons. For instance on CBOE the ultimate allocation depends upon, among other things, the size of an incoming order and whatever trading interest happens to be represented at the time the order is received (*e.g.*, one second only public customers may be represented at the best price, in which case the allocation to an individual customer is based on time priority; the next second there may be one public customer and multiple market makers at the best price, in which case the allocation to the customer is based on customer priority regardless of when the customer entered the order and to the other market-makers based on a price-time (or pro-rata or UMA share, if applicable) and any applicable entitlement share; a few seconds later there may be a market-turner, in which case the market turner trades first either entirely or based on a percentage share, then public customers at the best price trade based on time priority; the next second there may be only one public customer at the best price and incoming order takes out the entire balance of the resting order).

In determining their desired quote size and price, other market participants already account for the existence or non-existence of a Market-Maker entitlement (the entitlement may or may not be applied on an order-by-order basis and to different degrees under the current rules depending on, for example, whether a Market-Maker with an entitlement is actually quoting at the best price, the size of the Market-Maker's quote, the number of other Market-Makers quoting at that price, and the size of the incoming order). Under the proposed rule change, public customers that may adjust their quoting dynamics based upon, among other things, the applicable allocation algorithm may also want to account for the existence or non-existence of a Market-Maker entitlement, similar to how other market participants would already do today.[20]

[14] *See, e.g.,* Arca Rule 6.76A(a).

[15] *See* Securities Exchange Act Release No. 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR–CBOE–2009–078).

[16] *See, e.g.,* CBOE Rules 6.45A, 6.45B, 6.74, 6.74A and 6.74B, and ISE Rules 713, 716 and 723. Arca Rule 6.76A(a) is a slight exception because it only requires yielding to public customers at the same price that have time priority over the LMM or DOMM.

[17] Arca's price-time and LMM/DOMM entitlement is one example. *See, e.g.,* Arca Rule 6.76A(a). CBOE's price-time or pro-rata and existing modified participation entitlement are other examples. *See* CBOE Rules 6.45A(a)(ii)(3) and 6.45B(a)(i)(3).

[18] That the Exchange may use a pro-rata or UMA methodology to determine the Market-Maker's entitlement percentage does not have any impact from the public customer's perspective. The public customer either gets a pro-rata share or a 100% fill. *See, e.g.*, notes 11 and 12, *supra*, and surrounding discussion.

[19] The Exchange believes that public customers that are traditional retail investors do not typically enter resting orders based on allocation algorithms, so this change will not impact them. To the contrary, public customers actually benefit from the proposed allocation methodology because they get a minimum price-time or pro-rata share and, sometimes, a 100% fill before other market participants. Voluntary Professional and Professional customers are treated the same as broker-dealers (not public customers) under CBOE's allocation rules. *See* Rule 1.1(fff) and (ggg).

[20] For example, the impact of the proposed rule change would be reflected in a customer's average touch rate, which the customer might then use to determine size and price when entering orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [21] and the rules thereunder, and in particular with: Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [22] and Section 6(b)(8) of the Act, which requires the rules of an exchange not to impose any burden on competition not necessary or in furtherance of the Act.[23] The proposed rule change ensures that incoming electronic orders are allocated in an equitable and fair manner and that all market participants (including public customers) have a fair and reasonable opportunity for allocations based on established criteria and procedures. CBOE believes that the change will allow the Exchange other methods to reward aggressive pricing in options trading on the Hybrid System by making market turner available for classes utilizing any of the priority methods utilized by the Exchange. CBOE also believes that the modified participation entitlement, as amended, would encourage quote competition because is designed to reward aggressive pricing by offering incentives both for Market-Makers to support and participate in the CBOE marketplace and for market participants to establish the best price or quote at the best price with size. In classes utilizing a price-time algorithm with a modified participation entitlement, all market participants (including public customers) are incented to compete by establishing the best price. In classes utilizing a pro-rata algorithm with a modified participation entitlement, all market participants (including public customers) are incented to compete by quoting more size.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2010–038 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 No. SR–CBOE–2010–038. 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,[24] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2010–038 and should be submitted on or before June 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11811 Filed 5–17–10; 8:45 am]

BILLING CODE 8010–01–P

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(8).

[24] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[25] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7012; OMB Control Number 1405–0156]

30–Day Notice of Proposed Information Collection: DS–4048, Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act

ACTION: Notice of request for public comment and submission to OMB of proposed collections of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act.
- *OMB Control Number:* 1405–0156.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DS–4048.
- *Respondents:* Business Organizations.

- *Estimated Number of Respondents:* 25.
- *Estimated Number of Responses:* 25.
- *Average Hours per Response:* 60 hours.
- *Total Estimated Burden:* 1,500 hours.
- *Frequency:* Annually.
- *Obligation To Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from May 18, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collections and supporting documents from Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2804, or via e-mail at *memosni@state.gov*.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Section 25(a)(1) of the Arms Export Control Act requires an annual report to Congress on projected sales of major weapons and weapons-related defense equipment (if $7M or more) and non-major weapons or weapons-related defense equipment (if $25M or more). In order to prepare this report, the Directorate of Defense Trade Controls (DDTC) requests information from major defense companies by publishing a **Federal Register** notice and by placing a notice on its Web site. DDTC is requesting relevant projected sales that include the foreign country to which the item is to be sold, a description of the item, the item's quantity, and its value.

Dated: May 10, 2010.

Beth M. McCormick,

Deputy Assistant Secretary for Defense Trade and Regional Security, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2010–11853 Filed 5–17–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 7013]

Certifications Pursuant to Section 609 of Public Law 101–162

SUMMARY: On April 30, 2010, the Department of State certified, pursuant to Section 609 of Public Law 101–162 ("Section 609"), that 13 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 25 other countries and one economy, Hong Kong, do not pose a threat of the incidental taking of sea turtles protected under Section 609.

DATES: *Effective Date:* On Publication.

FOR FURTHER INFORMATION CONTACT: James J. Hogan, III, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; *telephone:* (202) 647–2252.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On April 30, 2010, the Department certified 13 nations on the basis that their sea turtle protection programs are comparable to that of the United States: Belize, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Madagascar, Nicaragua, Nigeria, Pakistan, Panama and Suriname.

The Department also certified 25 shrimp harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Nine nations and one economy only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets, or catch shrimp using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The nine nations and one economy are: The Bahamas, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru, Sri Lanka and Venezuela.

The Department of State withdrew Mexico's certification in March 2010 because Mexico's turtle protection program is not currently comparable to the U.S. program. An import prohibition went into effect on April 20, 2010. The United States Government and the Government of Mexico are working together to strengthen Mexico's Turtle Excluder Device (TED) program and to advance shared sea turtle conservation goals. Both governments are engaged to ensure renewal of Mexican certification within the shortest period of time consistent with the requirements of U.S. law.

The Department has certified Venezuela once again, albeit on a different basis than last year. In March 2008, the Government of Venezuela passed a law banning industrial shrimp trawling in its waters. The ban remains in effect. As a result, the Department has certified Venezuela as a nation whose fishing environment does not pose a threat of the incidental taking of sea turtles.

The Department of State has communicated the certifications under Section 609 to the Office of Field Operations of U.S. Customs and Border Protection.

In addition, this **Federal Register** Notice confirms that the requirement for all DS–2031 forms from uncertified nations must be originals and signed by the competent domestic fisheries authority. This policy change was first announced in a Department of State

media note released on December 21, 2004.

In order for shrimp harvested with Turtle Excluder Devices (TEDs) in an uncertified nation to be eligible for importation into the United States under the exemption: "Shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States", the Department of State must determine in advance that the government of the harvesting nation has put in place adequate procedures to ensure the accurate completion of the DS–2031 forms. At this time, the Department has made such a determination only with respect to Australia, Brazil and France. Thus, the importation of TED-caught shrimp from any other uncertified nation will not be allowed. For Brazil, only shrimp harvested in the northern shrimp fishery are eligible for entry under this exemption. For Australia, shrimp harvested in the Exmouth Gulf Prawn Fishery, the Northern Prawn Fishery, the Queensland East Coast Trawl Fishery and the Torres Strait Prawn Fishery is eligible for entry under this exemption. For France, shrimp harvested in the French Guiana domestic trawl fishery are eligible for entry under this exemption.

In addition, the Department has already made a determination with regard to wild-harvest shrimp harvested in the Spencer Gulf region in Australia. This product may be exported to the U.S. using a DS–2031 under the exemption for "shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental taking of sea turtles." An official of the Government of Australia still also must certify the DS–2031.

Dated: May 12, 2010.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 2010–11846 Filed 5–17–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 7014]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, June 8, 2010, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the International Maritime Organization (IMO) Diplomatic Conference to amend the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 and the Seafarers' Training, Certification and Watchkeeping (STCW) Code (STCW CONF.2) to be held at the Philippine International Convention Center (PICC), in Manila, The Philippines, from June 21 to June 25, 2010.

The primary matters to be considered include:

— Adoption of the agenda
— Adoption of the Rules of Procedure
— Election of Vice-Presidents and other officers of the Conference
— Appointment of the Credentials Committee
— Organization of the work of the Conference, including the establishment of other committees, as necessary
— Consideration of the draft amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978
— Consideration of the draft amendments to the Seafarers' Training, Certification and Watchkeeping (STCW) Code
— Consideration of draft resolutions and recommendations and related matters
— Consideration of the reports of the credentials committees and other committees
— Adoption of the Final Act and any instruments, resolutions and recommendations resulting from the work of the Conference
— Signature of the Final Act of the Conference

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should contact the meeting coordinator, Ms. Zoe Goss, by e-mail at *zoe.a.goss@uscg.mil,* by phone at (202) 372–1425, by fax at (202) 372–1925, or in writing at Commandant (CG–5212), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126. A member of the public requesting reasonable accommodation should make such request prior to Tuesday, June 1, 2010, 7 days prior to the meeting date. Requests made after this date may not be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo.*

Dated: May 11, 2010.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–11855 Filed 5–17–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 7015]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9 a.m. on Wednesday, June 23, 2010, in Conference Room 05–1224 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the eighteenth Session of the International Maritime Organization (IMO) Subcommittee on Flag State Implementation (FSI) to be held at the IMO headquarters in London, United Kingdom, from July 5 to July 9, 2010.

The primary matters to be considered include:

—Adoption of the agenda;
—Decisions of other IMO bodies;
—Responsibilities of Governments and measures to encourage Flag State compliance;
—Mandatory reports under International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
—Port reception facilities-related issues;
—Casualty statistics and investigations;
—Harmonization of port State control activities;
—Port State Control (PSC) Guidelines on seafarers' working hours and PSC guidelines in relation to the Maritime Labour Convention, 2006;
—Development of guidelines on port State control under the 2004 Ballast Water Management (BWM) Convention;
— Review of Guidelines for the inspection of anti-fouling systems on ships;
—Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;

—Review of the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC);
—Consideration of International Association of Classification Societies (IACS) unified interpretations;
—Review of the Code for the Implementation of Mandatory IMO Instruments;
—Development of a Code for Recognized Organizations;
—Measures to protect the safety of persons rescued at sea;
—Election of Chairman and Vice-Chairman for 2010.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator; Mr. E.J. Terminella by e-mail at *Emanuel.J.TerminellaJr@uscg.mil,* by phone at (202) 372–1239, by fax at (202) 372–1918, or in writing at Commandant (CG–5432), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7581, Washington, DC 20593–7581 not later than June 16, 2010, 7 days prior to the meeting. Requests made after June 16, 2010 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited.

Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo.*

Dated: May 11, 2010.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–11858 Filed 5–17–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6973]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State's Advisory Committee on International Communications and Information Policy (ACICIP) will hold a public meeting on June 10, 2010 from 9 a.m to 12 p.m. in Room 1107 of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Thomas Wheeler of Core Capital Partners and Ambassador Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy. The meeting's agenda will include discussions pertaining to various upcoming international telecommunications meetings and conferences, as well as bilateral and multilateral meetings that have taken place recently. In addition, the Committee will discuss key issues of importance to U.S. communications policy interests including the Internet of things, bridging the global digital divide, inbound direct investment issues, and international market access issues.

Members of the public may submit suggestions and comments to the ACICIP. Submissions regarding an event, consultation, meeting, etc. listed in the agenda above should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of that listed event. All comments must be submitted in written form and should not exceed one page for each country (for comments on consultations) or for each subject area (for other comments). Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-clearance. For placement on the pre-clearance list, please submit the following information no later than 5 p.m. on Monday, June 7, 2010. (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. State That You Are Requesting Pre-Clearance to a Meeting

II. Provide the Following Information

1. Name of meeting and its date and time.
2. Visitor's full name.
3. Date of birth.
4. Citizenship.
5. Acceptable forms of identification for entry into the U.S. Department of State include:
   - U.S. driver's license with photo.
   - Passport.
   - U.S. government agency ID.
8. ID number on the form of ID that the visitor will show upon entry.
9. Whether the visitor has a need for reasonable accommodation. Such requests received after June 1st might not be possible to fulfill.

Send the above information to Joseph Burton by fax (202) 647–7407 or e-mail *BurtonKJ@state.gov.*

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Joseph Burton, Executive Secretary of the Committee, at (202) 647–5231 or *BurtonKJ@state.gov.*

General information about ACICIP and the mission of International Communications and Information Policy is available at: *http://www.state.gov/e/eeb/adcom/c667.htm.*

Dated: May 7, 2010.

Joseph Burton,

ACICIP Executive Secretary, Department of State.

[FR Doc. 2010–11849 Filed 5–17–10; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issue Area—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: This notice is re-published for editorial clarification. The original publication was sufficiently similar in substance to serve as due notice. The FAA assigned the Aviation Rulemaking Advisory Committee (ARAC) a new task

to identify and develop recommendations on additional requirements for low speed alerting in new transport category airplanes. This task is the first phase of an overall effort to examine new standards, as well as possible retrofit standards. This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Ave., SW., Renton, Washington 98057; telephone (425) 227–2011, facsimile (425) 227–1149; e-mail *joe.jacobsen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The original ARAC tasking notice published in the **Federal Register** on April 2, 2010 (75 FR 16902). The following is a reprint that includes some minor editorial corrections.

The FAA established ARAC to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. With respect to low speed alerting, the FAA previously revised regulations in the area of flight guidance (autopilot) and performance and handling qualities in icing conditions to improve transport airplane standards for low speed protection (in the case of icing, stall warning standards were enhanced). However, as a result of several recent loss-of-control accidents and incidents, the FAA has identified a need for additional low speed safeguards, in addition to the regulatory actions that have already been taken. The committee will address the first task under the Transport Airplane and Engine Issues, under the existing Avionics Systems Harmonization Working Group.

The Task

ARAC is initially tasked with providing information that will be used to develop standards and guidance material for low speed alerting systems. This information may result in standards that complement existing stall warning requirements. The working group will be expected to provide a report that addresses the following low speed alerting technical questions, relative to new aircraft designs (Phase 1 task—new Part 25 standards), and provides the rationale for their responses. If there is disagreement within the working group, those items should be documented, including the rationale from each party and the reasons for the disagreement.

- How much time is needed to alert the crew in order to avoid stall warning or excessive deviation below the intended operating speed?
- What would make the alerting instantly recognizable, clear, and unambiguous to the flightcrew?
- How could nuisance alerts be minimized?
- Could the alerting operate under all operating conditions, configurations, and phases of flight, including icing conditions?
- Could the alerting operate during manual and autoflight?
- Could the system reliability be made consistent with existing regulations and guidance for stall warning systems?
- Are there any regulations or guidance material that might conflict with new standards?
- What recommended guidance material is needed?
- After reviewing airworthiness, safety, cost, benefit, and other relevant factors, including recent certification and fleet experience, are there any additional considerations that should be taken into account?
- Is coordination necessary with other harmonization working groups (e.g., Human Factors, Flight Test)? (If yes, coordinate and report on that coordination.)

The working group will also be expected to provide a report that addresses the following low speed alerting technical questions, relative to existing aircraft designs (as a lead-in to the Phase 2 task—retrofit standards), and provides the rationale for their responses. If there is disagreement within the working group, those items should be documented, including the rationale from each party and the reasons for the disagreement.

- How timely is the airplane in alerting the crew of flight below the intended operating speed? How timely relative to stall warning?
- Is alerting instantly recognizable, clear, and unambiguous to the flightcrew?
- How are nuisance alerts minimized?
- Does the alerting operate under all operating conditions, configurations, and phases of flight, including icing conditions?
- Does the alerting operate during manual and autoflight?
- After reviewing airworthiness, safety, cost, benefit, and other relevant factors, including recent certification and fleet experience, are there any additional considerations that should be taken into account?
- Is coordination necessary with other harmonization working groups (e.g., Human Factors, Flight Test)? (If yes, coordinate and report on that coordination.)
- If improvements are needed for low speed alerting in the existing fleet, should the FAA adopt a design approval holder (part 26) requirement to mandate development of design changes, or would an operational rule be sufficient? In responding, the working group should address the factors set forth in "FAA Policy Statement: Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes" (70 FR 40166, July 12, 2005).

The ARAC working group should provide information that could lead to standards for low speed alerting that can be satisfied with practical design approaches.

Schedule

The required completion date is 9 months after the FAA publishes the task in the **Federal Register**.

ARAC Acceptance of Task

ARAC accepted the task and assigned it to the existing Avionics Systems Harmonization Working Group in the Transport Airplane and Engine Issue Area. The working group serves as staff to ARAC and assists in the analysis of assigned tasks. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA.

Working Group Activity

The Avionics Systems Harmonization Working Group must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on Transport Airplane and Engine Issues held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.
3. Draft the appropriate documents and required analyses and/or any other related materials or documents.
4. Provide a status report at each meeting of the ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Group

The Avionics Systems Harmonization Working Group is composed of technical experts having an interest in the assigned task. A working group

member need not be a representative or a member of the full committee.

If you have expertise in the subject matter and wish to become a member of the working group, write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire. Describe your interest in the task and state the expertise you would bring to the working group. We must receive all requests by May 3, 2010. The assistant chair, the assistant executive director, and the working group co-chairs will review the requests and advise you whether or not your request is approved.

If you are chosen for membership on the working group, you must represent your aviation community segment and actively participate in the working group by attending all meetings and providing written comments when requested to do so. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management chain and those you may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with your sponsoring organization's position when the subject being negotiated is presented to ARAC for approval. Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC are open to the public. Meetings of the Avionics Systems Harmonization Working Group will not be open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on May 12, 2010.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 2010–11796 Filed 5–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 12, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before June 17, 2010 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–0043.

Type of Review: Extension without change of a currently approved collection.

Title: Consent of Shareholder to Include Specific Amount in Gross Income.

Form: 972.

Abstract: Form 972 is filed by shareholders of corporations to elect to include an amount in gross income as a dividend. The IRS uses Form 972 as a check to see if an amended return is filed to include the amount in income and to determine if the corporation claimed the correct amount.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 385 hours.

OMB Number: 1545–0145.

Type of Review: Extension without change of a currently approved collection.

Title: Notice to Shareholder of Undistributed Long-Term Capital Gains.

Form: 2439.

Abstract: Form 2439 is sent by regulated investment companies and real estate investment trusts to report undistributed capital gains and the amount of tax paid on these gains designated under IRC section 852(b)(3)(D) or 857(b)(3)(D). The company, the trust, and the shareholder file copies of Form 2439 with IRS. IRS uses the information to check shareholder compliance.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 29,995 hours.

OMB Number: 1545–0889.

Type of Review: Revision of a currently approved collection.

Title: Disclosure Statement (Form 8275), and Regulation Disclosure Statement (Form 8275–R).

Form(s): 8275, 8275–R.

Abstract: IRC section 6662 imposes accuracy related penalties for substantial understatement of tax liability or negligence or disregard of rules and regulations. Section 6694 imposes similar penalties on return preparers. Regulations section 1.6662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation on Form 8275–R.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,716,664 hours.

OMB Number: 1545–1459.

Type of Review: Extension without change of a currently approved collection.

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

Form: 8498.

Abstract: This information relates to the approval of continuing professional education programs for the individuals enrolled to practice before the Internal Revenue Service (enrolled agents).

Respondents: Individuals or Households.

Estimated Total Burden Hours: 300 hours.

OMB Number: 1545–1556.

Type of Review: Extension without change of a currently approved collection.

Title: REG–251985–96 (TD 8786—Final) Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From A.

Abstract: The information requested in section 1.863–3(f) (6) is necessary for the Service to audit taxpayers' return to ensure taxpayers are properly determining the source of their income.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1545–0045.

Type of Review: Extension without change of a currently approved collection.

Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

Form: 976.

Abstract: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to eliminate all or a portion of a tax deficiency. The IRS uses Form 976 to determine if shareholders have included amounts in gross income.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,830 hours.

OMB Number: 1545–0746.

Type of Review: Extension without change of a currently approved collection.

Title: LR–100–78 (Final) Creditability of Foreign Taxes.

Abstract: The information needed is a statement by the taxpayer that it has elected to apply the safe harbor formula of section 1.901–2A (e) of the foreign tax credit regulations. This statement is necessary in order that the IRS may properly determine the taxpayer's tax liability.

Respondents: Private Sector: Businesses or other for-profits and Farms.

Estimated Total Burden Hours: 37 hours.

OMB Number: 1545–1566.

Type of Review: Revision of a currently approved collection.

Title: Notice 97–66, Certain Payments Made Pursuant to a Securities Lending Transaction; NOT–152783–09—Guidance Regarding Prevention of Over-Withholding and U.S. Tax Avoidance with Respect to Certain Subst...

Abstract: Notice 97–66 modifies final regulations which are effective November 14, 1997. The Notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and repurchased transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments. NOT–152783–09 modifies Notice 97–66, by providing necessary information to ensure taxpayers are not subject to excessive tax pursuant to IRC section 871(l). The information will allow a withholding agent to make a substitute dividend payment to certain counterparties in a series of securities lending transactions without withholding and depositing additional excessive tax.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 62,750 hours.

OMB Number: 1545–1224.

Type of Review: Extension without change of a currently approved collection.

Title: INTL–112–88 (Final) Allocation and Apportionment of Deduction for State Income Taxes.

Abstract: This regulation provides guidance on when and how the deduction for state income taxes is to be allocated and apportioned between gross income from sources within and without the United States in order to determine the amount of taxable income from those sources. The reporting requirements in the regulation affect those taxpayers claiming foreign tax credits who elect to use an alternative method from that described in the regulation to allocate and apportion deductions for state income taxes.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–0429.

Type of Review: Extension without change of a currently approved collection.

Title: Request for Copy of Tax Return.

Form: 4605.

Abstract: 26 USC 7513 allows for taxpayers to request a copy of a tax return. Form 4506 is used by a taxpayer to request a copy of a Federal tax form. The information provided will be used for research to locate the tax form and to ensure that the requester is the taxpayer or someone authorized by the taxpayer.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 260,000 hours.

OMB Number: 1545–0755.

Type of Review: Extension without change of a currently approved collection.

Title: LR–58–83 (TD 7959—Final) Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

Abstract: The election described in the attached justification converted an annual election to an election effective until revoked. The computational information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to that shareholder.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 205 hours.

OMB Number: 1545–1316.

Type of Review: Extension without change of a currently approved collection.

Title: Filing Assistance Program (Do you have to file a tax return?).

Form: 9452.

Abstract: The RUF (Reduce Unnecessary Filing) Program was initiated in 1992. Each year approximately 72% of the taxpayers contacted through the RUF Program stop filing unnecessary returns. This has reduced taxpayer burden and been cost effective for the service. This is in accord with the Service's compliance and burden reduction initiatives.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 825,000 hours.

OMB Number: 1545–1455.

Type of Review: Extension without change of a currently approved collection.

Title: PS–80–93 (TD 8645—Final) Rules for Certain Rental Real Estate Activities.

Abstract: The regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations on Internal Revenue Code section 469.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 3,015 hours.

OMB Number: 1545–1719.

Type of Review: Extension without change of a currently approved collection.

Title: REG–106446–98 (TD 9003—Final) Relief From Joint and Several Liability.

Abstract: This document contains final regulations relating to relief from joint and several liability under section 6015 of the Internal Revenue Code. The regulations reflect changes in the law made by the Internal Revenue Service Restructuring and Reform Act of 1998 and by the Community Renewal Tax Relief Act of 2000. The regulations provide guidance to married individuals filing joint returns who seek relief from joint and several liability.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1452.

Type of Review: Extension without change of a currently approved collection.

Title: FI–43–94 (TD 8649—Final) Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions.

Abstract: Section 1258 recharacterizes capital gains from conversion

transactions as ordinary income to the extent of the time value element. This regulation provides that certain gains and losses may be netted for purposes of determining the amount of gain recharacterized.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,000 hours.

OMB Number: 1545–0159.

Type of Review: Revision of a currently approved collection.

Title: Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

Form: 3520.

Abstract: Form 3520 is filed by U.S. persons who create a foreign trust, transfer property to a foreign trust, receive a distribution from a foreign trust, or receive a large gift from a foreign source. IRS uses the form to identify the U.S. persons who may have transactions that may trigger a taxable event in the future.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 72,059 hours.

OMB Number: 1545–1098.

Type of Review: Extension without change of a currently approved collection.

Title: Arbitrage Restrictions on Tax-Exempt Bonds TD 8418 Final (FI–91-86; FI–90–86; FI–90–91; and FI–1–90).

Abstract: This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.

Respondents: State, Local, and Tribal governments.

Estimated Total Burden Hours: 8,550 hours.

OMB Number: 1545–1718.

Type of Review: Extension without change of a currently approved collection.

Title: REG–106030–98 (TD 9305—final) Source of Income from Certain Space and Ocean Activities; Also, Source of Communications Income.

Abstract: This document contains final regulations under section 863(d) governing the source of income from certain space and ocean activities. It also contains final regulations under section 863(a), (d), and (e) governing the source of income from certain communications activities. In addition, this document contains final regulations under section 863(a) and (b), amending the regulations in § 1.863–3 to conform those regulations to these final regulations. The final regulations primarily affect persons who derive income from activities conducted in space, or on or under water not within the jurisdiction of a foreign country, possession of the United States, or the United States (in international water). The final regulations also affect persons who derive income from transmission of communications.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,250 hours.

OMB Number: 1545–0117.

Type of Review: Extension without change of a currently approved collection.

Title: Original Issue Discount.

Form: 1099–OID.

Abstract: Form 1099–OID is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,142,324 hours.

OMB Number: 1545–1572.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8775 (Final) Election Not to Apply Look-Back Methods in De Minimis Cases (REG–120200–97).

Abstract: The regulation requires taxpayers to attach a notification statement to their returns when they elect not to apply the look-back method to long-term contracts in de minimis cases.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4,000 hours.

OMB Number: 1545–1870.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 9107 (Final)—Guidance Regarding Deduction and Capitalization of Expenditures (REG–125638–01).

Abstract: Final regulations require that a taxpayer's nonaccrual-experience method must be self-tested against the taxpayer's experience to determine whether the nonaccrual-experience method clearly reflects the taxpayer's experience. The information required to be retained by taxpayers will constitute sufficient documentation for purposes of substantiating a deduction. The information will be used by the agency on audit to determine the taxpayer's entitlement to a deduction. The respondents include taxpayers who engage in certain transactions involving the acquisition of a trade or business or an ownership interest in a legal entity.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,000 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–11834 Filed 5–17–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 970, Application To Use LIFO Inventory Method.

DATES: Written comments should be received on or before July 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application To Use LIFO Inventory Method.

OMB Number: 1545–0042.

Form Number: Form 970.

Abstract: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the last-in first-out (LIFO) inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individual or households.

Estimated Number of Respondents: 2000.

Estimated Time per Respondent: 12 hours, 24 minutes.

Estimated Total Annual Burden Hours: 24,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–11766 Filed 5–17–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–9

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–9, Form 940 *e-file* Program.

DATES: Written comments should be received on or before July 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Elaine H. Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 940 *e-file* Program.

OMB Number: 1545–1710.

Revenue Procedure Number: Revenue Procedure 2007–40 (formerly Revenue Procedure 2001–9).

Abstract: Revenue Procedure 2007–40 provides guidance and the requirements for participating in the Form 940 *e-file* Program.

Current Actions: There are changes being made to the revenue procedure at this time. Revenue Procedure 2001–9 is being replaced by Revenue Procedure 2007–40.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, State, local or Tribal governments.

Estimated Number of Respondents: 1,325,100.

Estimated Time per Respondent: 32 minutes.

Estimated Total Annual Burden Hours: 706,720.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 12, 2010.

Gerald Shields,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–11765 Filed 5–17–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879–EO

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879–EO, IRS *e-file* Signature Authorization for an Exempt Organization.

DATES: Written comments should be received on or before July 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: IRS *e-file* Signature Authorization for an Exempt Organization.

OMB Number: 1545–1878.

Form Number: 8879–EO.

Abstract: Form 8879–EO authorizes an officer of an exempt organization and electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign an organization's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 94,603.

Estimated Time Per Respondent: 4 hours, 29 minutes.

Estimated Total Annual Burden Hours: 425,714.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 7, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–11763 Filed 5–17–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–38: OTS Nos. 06947 and H 4709]

Savings Bank of Maine, MHC and Savings Bank of Maine, Gardiner, Maine; Approval of Conversion Application

Notice is hereby given that on May 7, 2010, the Office of Thrift Supervision approved the application of Savings Bank of Maine, MHC and Savings Bank of Maine, Gardiner, Maine, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: (202) 906–5922 or e-mail: *public.info@ots.treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: May 11, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–11664 Filed 5–17–10; 8:45 am]

BILLING CODE 6720–01–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Mark Winter, Tennessee Valley Authority, 1101 Market Street (MP–3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

Comments should be sent to the Agency Clearance Officer no later than *July 19, 2010.*

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Employment Application.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 3,000.

Estimated Total Annual Burden Hours: 3,000.

Estimated Average Burden Hours per Response: 1.0.

Need for and Use of Information: Applications for employment are needed to collect information on qualifications, suitability for employment, and eligibility for veteran's preference. The information is used to make comparative appraisals and to assist in selections. The affected public consists of individuals who apply for TVA employment.

James W. Sample,

Director of CyberSecurity.

[FR Doc. 2010–11798 Filed 5–17–10; 8:45 am]

BILLING CODE 8120–08–M

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Update to notice of open public hearing—May 20, 2010, Washington, DC. Room changed to 562 Dirksen Senate Office Building.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. This is an updated version of the original notice published on April 29, 2010. Please note the change of the hearing room to Room 562 of the Dirksen Senate Office Building.

Name: Daniel M. Slane, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China."

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC, on May 20, 2010, to address "China's Emergent Military Aerospace and Commercial Aviation Industry."

Background

This is the fifth public hearing the Commission will hold during its 2010 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The May 20 hearing will examine the progress in China's attempts to field a modern air force and develop both its commercial and military aviation industrial complex. The May 20 hearing will be Co-chaired by Commissioners Daniel A. Blumenthal and Peter Videnieks.

Any interested party may file a written statement by May 20, 2010, by mailing to the contact below. On May 20, the hearing will be held in two sessions, one in the morning and one in the afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Transcripts of past Commission public hearings may be obtained from the USCC Web site, *http://www.uscc.gov*.

DATE AND TIME: Thursday, May 20, 2010, 9 a.m. to 4 p.m. Eastern Daylight Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov as soon as available.*

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 of the Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC, 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: May 13, 2010.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2010–11829 Filed 5–17–10; 8:45 am]

BILLING CODE 1137–00–P

Federal Register

Tuesday,
May 18, 2010

Part II

Department of Defense

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Air Force, Air Force Research Laboratory (AFRL); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Air Force, Air Force Research Laboratory (AFRL)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy) (DUSD (CPP)), DoD.

ACTION: Notice of amendment to modify existing demonstration project initiatives.

SUMMARY: This notice of amendment modifies existing demonstration project initiatives, to adopt flexibilities from Science and Technology Reinvention Laboratories (STRLs) and to propose expansion of coverage of the AFRL Personnel Demonstration Project to AFRL employees in Business Management and Professional, Technician, and Mission Support occupations.

DATES: The adoption of the listed STRL demonstration project flexibilities may be implemented beginning on the date of publication of this notice in the **Federal Register;** and implementation of the flexibilities will be through AFRL implementing issuances and notices to appropriate stakeholders.

The proposed expansion of the AFRL Demonstration Project may not be implemented until a 30-day comment period is provided, comments addressed, and a final **Federal Register** notice published. To be considered, written comments must be submitted on or before June 17, 2010.

ADDRESSES: Send comments on or before the comment due date by mail to Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144; by e-mail to *Betty.Duffield@cpms.osd.mil;* or by Fax to 703–696–5462.

FOR FURTHER INFORMATION CONTACT: *AFRL:* Ms. Michelle Williams, AFRL/DPL, 1864 4th Street, Wright-Patterson AFB, Ohio 45433–7130.

DoD: Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION: This notice of amendment modifies existing demonstration project initiatives, to adopt flexibilities from Science and Technology Reinvention Laboratories (STRLs), previously enumerated in section 9902(c)(2) of title 5, United States Code (U.S.C.), now redesignated in section 1105 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010, Public Law 111–84, 123 Stat. 2486, and to propose expansion of coverage of the AFRL Personnel Demonstration Project to AFRL employees in Business Management and Professional, Technician, and Mission Support occupations.

Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, as amended (10 U.S.C. 2358 note) by section 1109 of NDAA FY 2000 and section 1114 of NDAA FY 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as STRLs. The above-cited legislation authorizes DoD to conduct demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1107 of Public Law 110–181, as amended by section 1109 of Public Law 110–417 requires the Secretary of Defense to execute a process and plan to employ the personnel management demonstration project authorities granted to the Office of Personnel Management under section 4703, title 5, U.S.C., at the STRLs previously enumerated in section 9902(c)(2) of title 5, U.S.C., which are now redesignated in section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, and 73 FR 73248, to enhance the performance of these laboratories. AFRL is listed as one of the STRLs previously enumerated in section 9902(c)(2) of title 5, U.S.C., and now redesignated in section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486.

1. Background

The STRL demonstration projects are "generally similar in nature" to the Navy's China Lake Demonstration Project. The terminology "generally similar in nature" does not imply an emulation of various features, but rather "that the effectiveness of Federal laboratories can be enhanced by allowing greater managerial control over personnel functions," * * * which * * * "can help managers to operate with more authority, responsibility, and skill to increase work force and organizational effectiveness and efficiency." [1]

In August 1994, a special action "Tiger Team" was formed by the Director of Science and Technology for Air Force Materiel Command in response to the proposed DoD legislation allowing reinvention laboratories to conduct personnel demonstration projects. The team was chartered to take full opportunity of this legislation and develop solutions that would alleviate or resolve many of the prevalent and well-documented Laboratory personnel issues. The team composition included managers from the original four Air Force Laboratories (which merged and became AFRL in August 1997), retired and current Laboratory directors, and subject matter experts from civilian personnel and manpower. This team developed 27 initiatives which together represented sweeping changes in the entire spectrum of human resource management for the Laboratory. Several initiatives were designed to assist the Laboratory in hiring and placing highly-qualified Scientist and Engineer (S&E) candidates to fulfill mission requirements. Others focused on developing, motivating, and equitably compensating employees based on their contribution to the mission. Initiatives to effectively manage workforce turnover and maintain organizational excellence were also developed. These 27 initiatives were endorsed and accepted in total by the four Laboratory Commanders.

After the authorizing legislation passed, a Demonstration Project Office with four employees was established in September 1994. Under the guidance of the Air Force Materiel Command Director of Science and Technology, the Project Office was charged with further developing and implementing the demonstration concept. Initially, the Project Office solicited volunteers from across the then four Laboratories and the servicing civilian personnel offices to staff six integrated product teams. Sixty civilian managers and employees from most of the four Laboratories' geographic locations and appropriate base level personnel offices worked for nine months to develop the detailed concept and implementation for each initiative.

After a thorough study, the original 27 initiatives were reduced to 20. Seven of these initiatives were published in the original **Federal Register** notice and appear herein. The remaining initiatives were subject to either DoD or AF regulation and waivers were sought at those levels.

2. Overview

This **Federal Register** notice (FRN) supersedes the four previous AFRL Demonstration Project FRNs. Substantive changes include updating the demonstration project Reduction-in-Force (RIF) procedures; expanding the

[1] **Federal Register**, Vol. 45, No. 77, Friday, April 18, 1980, Proposed Demonstration Project: An Integrated Approach to Pay, Performance Appraisal, and Position Classification for More Effective Operation of Government Organizations.

coverage of the Demonstration Project to include AFRL employees in Business Management and Professional, Technician, and Mission Support occupations; and the ability to establish an Above GS–15 authority (broadband level V). In this FRN, AFRL is also adopting flexibilities from other STRL personnel demonstration projects. Additional flexibilities include using an alternative examining process; implementing the Distinguished Scholastic Achievement Appointment authority; expanding the use of temporary promotions and details; authorizing pay setting flexibilities; and requiring the Demonstration Project to be cost disciplined. Also, the expanded plan reduces the number of factors from six to four, with corresponding descriptors for each broadband level in a career path.

The original AFRL Personnel Management Demonstration Project plan was published in 61 FR 60399, November 27, 1996. This Demonstration Project plan involves simplified, delegated position classification, two types of appointment authorities, an extended probationary period, broadbanding, and a Contribution-based Compensation System (CCS). Three amendments to the final plan were published in the **Federal Register.** The first amendment to clarify which employees are subject to the extended probationary period; provide the CCS bonus to eligible employees subject to the General Schedule (GS) 15, step 10 pay cap; and change the names of the descriptor "Cooperation and Supervision" and CCS Factor 6, "Cooperation and Supervision," to "Teamwork and Leadership" was published in 65 FR 3498, January 21, 2000. The second amendment changed the amount of time required to be assessed under CCS from 180 to 90 calendar days and was published in 70 FR 60495, October 18, 2005. The third amendment eliminating mandatory factor weights was published in 74 FR 15463, April 6, 2009.

Flexibilities published in this **Federal Register** notice shall be available for use by all STRLs enumerated in section 9902(c)(2) of title 5, U.S.C., which are now redesignated in section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, if they wish to adopt them in accordance with DoD Instruction 1400.37; 73 FR 73248 to 73252; and the fulfilling of any collective bargaining obligations.

Dated: May 12, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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I. Executive Summary

The original Project was designed by the Department of the Air Force (AF), with participation of and review by the DoD and the Office of Personnel Management (OPM). The purpose was to achieve the best workforce for the Laboratory mission, prepare the workforce for change, and improve workforce quality. The Project framework addressed all aspects of the human resources life cycle model. There were three major areas of change: (1) Laboratory-controlled rapid hiring; (2) a Contribution-based Compensation System; and (3) a streamlined removal process.

Initially, the Project covered only professional S&E positions and employees. This **Federal Register** notice incorporates a design for coverage of not only S&E employees but also the AFRL employees in Business Management and Professional, Technician, and Mission Support occupations.

II. Introduction

A. Purpose

The purpose of the Project is to demonstrate that the effectiveness of DoD laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. This Demonstration Project, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality Laboratory and quality products.

B. Problems With the Present System

The success of the Demonstration Project for S&E personnel has convinced AFRL management that the same system should be implemented for the remaining AFRL workforce. The Laboratory Demonstration Project implemented a broadbanding structure that replaced the 15 grades under the GS classification structure. This flexibility has enabled management to offer competitive starting salaries and seamlessly progress employees through the broadband levels based on contribution to the mission. The CCS has provided management an effective, efficient, and flexible method for assessing, compensating, and managing the S&E workforce. CCS has created more employee involvement in the assessment process, increased communication between supervisors and employees, promoted a clear accountability of contribution, facilitated employee career progression, and has provided an understandable basis for basic pay changes.

The civilian GS personnel system has several major inefficiencies, which hinder management's ability to recruit and retain the best-qualified personnel. Line managers have only limited flexibility to administer personnel resources, and existing personnel regulations are often in conflict with management's ability to support world-class research. Current personnel action processes cause delays in recruiting, reassigning, promoting, and removing employees. AFRL received no hiring authorities with the initial Demonstration Project implementation. Laboratories that implemented their authorities at a later time received hiring flexibilities that AFRL now wishes to pursue.

The GS classification system requires lengthy, narrative, individual position descriptions, which have to be classified by the use of complex and often outdated position classification

standards. The classification process under the AFRL Demonstration Project has been highly successful, can be accomplished quickly and efficiently, and has given managers control over their workforce.

The current RIF system, for both GS and demonstration project employees, does not adequately recognize contribution as a major criterion in RIF situations. The RIF rules are complex and difficult to understand and administer. The RIF process disrupts operations, due to displacement of employees within their competitive levels and in the exercise of bump and retreat rights.

The same flexibilities for attracting and retaining highly talented employees from which AFRL currently benefits for the S&E workforce should not be limited to the S&E career path. The success of the Laboratory is dependent on its total workforce not just S&E personnel; thus, the demonstration project flexibilities should be extended to the entire Laboratory workforce. The new authorities will provide additional management tools that will enable AFRL to attract and retain the best and brightest employees for all career paths.

C. Changes Required/Expected Benefits

The AFRL Demonstration Project has demonstrated that a human resource system tailored to the mission and needs of the Laboratory results in: (a) Increased quality of the workforce and the Laboratory products they produce; (b) increased timeliness of key personnel processes; (c) trended workforce data that reveals increased retention of "excellent contributors" and increased separation rates of "poor contributors;" and (d) increased employee satisfaction with the Laboratory.

D. Participating Employees and Labor Participation

There are approximately 5,025 employees assigned to AFRL, with the majority located in or at Arlington, Virginia; Brooks City Base, Texas; Edwards Air Force Base (AFB), California; Eglin AFB, Florida; Hanscom AFB, Massachusetts; Kirtland AFB, New Mexico; Rome, New York; Tyndall AFB, Florida; and Wright-Patterson AFB, Ohio. Employees are also located at sites around the world.

Of the 5,025 AFRL employees, approximately 2,630 are currently in the Demonstration Project. The National Federation of Federal Employees (NFFE) and the American Federation of Government Employees (AFGE) represent professional and nonprofessional employees at many sites within AFRL. At this time, there are approximately 140 employees in the NFFE and AFGE bargaining units that are in the Demonstration Project. AFRL is proceeding to fulfill its obligation to consult or negotiate with the unions, as appropriate, in accordance with 5 U.S.C. 4703(f) and 7117. AFRL plans to initially convert the non-bargaining unit workforce into the Project with the hope of successfully negotiating with the impacted unions to convert the remaining Business Management and Professional, Technician, and Mission Support workforce into the Project at a later date.

In determining the original scope of the Demonstration Project, primary consideration was given to the number and diversity of occupations within the Laboratory and the need for adequate development and testing of the Contribution-based Compensation System. Additionally, DoD human resource management design goals and priorities for the entire civilian workforce were considered. While the intent of this Project is to provide the AFRL Commander/Executive Director and subordinate supervisors with increased control and accountability for their total workforce, the decision was made to initially restrict development efforts to GS/GM positions within the professional S&E specialties.

With this expansion effort, a total of 155 occupational series are included in the Project. During the course of the Project, other series may be included or moved to a more appropriate career path. For instance, a path for physicians and dentists may be added to the Project at a later date.

The series included in the initial implementation of the Project were placed in the S&E career path (pay plan DR). The success of the Demonstration Project for the S&Es has proven that it is prudent to expand the flexibilities to the AFRL workforce in Business Management and Professional, Technician, and Mission Support occupations. This **Federal Register** notice proposes implementation of three new career paths for the Business Management and Professional (pay plan DO), Technician (pay plan DX), and Mission Support (pay plan DU) occupations. The new career paths are constructed based on career progression and occupational responsibilities, taking into consideration the AFRL workforce, the existing S&E career path and the design of other Defense laboratory broadbanding systems. The career paths along with the occupational series included are listed in Appendix A. Series may be added or deleted as mission work evolves and new competencies are needed.

E. Project Design

For the expansion design, the AFRL Demonstration Project Office recruited volunteers from the 10 AFRL directorates. Most team members were drawn from the career fields being considered for expansion, although some engineers were on the team to assist with understanding the current authorities. The team considered existing AFRL authorities in addition to authorities and design elements of the other DoD Personnel Management Demonstration Project laboratories and other Federal alternative personnel systems.

Although some of the original initiatives addressed recruiting and hiring issues, the Demonstration Project was not able to implement hiring flexibilities with the original publication. Additionally, the RIF changes were denied at the last minute, leaving only a change in how additional service credit was awarded based on the CCS scores. This **Federal Register** notice adopts hiring authorities currently utilized by other DoD STRL Personnel Demonstration Projects and implements a redesigned RIF methodology, which simplifies and strengthens the process.

III. Personnel System Changes

A. Hiring and Appointment Authorities

1. Description of Hiring Process

At this time, AFRL is implementing a streamlined examining process as demonstrated in other Defense Personnel Management Demonstration Project laboratories. This applies to all positions in AFRL, with the exception of Senior Executive Service (SES), Scientific or Professional (ST), and broadband V positions and any examining process covered by court order. This authority includes the coordination of recruitment and public notices, the administration of the examining process, the certification of candidates, and selection and appointment consistent with merit system principles, to include existing authorities under title 5, U.S.C. and title 5, CFR. The "rule of three" is eliminated, similar to the authorities granted to: (1) Naval Research Laboratory (NRL), 64 FR 33970, June 24, 1999; (2) Naval Sea (NAVSEA) Systems Command Warfare Centers, 62 FR 64049, December 3, 1997; and (3) Communications-Electronics Research, Development, and Engineering Center (CERDEC), 66 FR 54871, October 30, 2001. When there are no more than 15 qualified applicants and no preference eligibles, all eligible

applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking are required only when the number of qualified candidates exceeds 15 or there is a mix of preference and nonpreference applicants. Statutes and regulations covering veterans' preference are observed in the selection process and when rating and ranking are required.

AFRL's Distinguished Scholastic Achievement Appointment Authority (DSAA) uses an alternative examining process which provides the authority to appoint individuals with undergraduate or graduate degrees through the doctoral level to positions up to the equivalent of GS–12 in series identified in the S&E or Business Management and Professional career paths. This enables AFRL to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements. This flexibility is similar in nature to the authority granted to: (1) The Army Missile Research, Development, and Engineering Center (AMRDEC), 64 FR 12216, March 11, 1999; (2) Army Research Laboratory (ARL), 65 FR 3500, January 21, 2000; (3) Army Engineer Research and Development Center (ERDC), 64 FR 12216, March 11, 1999; and (4) NAVSEA, 62 FR 64064, December 3, 1997.

Candidates may be appointed provided they meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions" and the candidate has a cumulative grade point average of 3.5 (on a 4.0 scale) or better in their field of study (or other equivalent score) or are within the top 10 percent of a university's major school of graduate studies, such as Business School, Law School, etc.

2. Qualification Determinations

A candidate's basic eligibility is determined using OPM's "Qualification Standards Handbook for General Schedule Positions." Selective placement factors may be established in accordance with OPM's Qualification Handbook when judged to be critical to successful position contribution. These factors are communicated to all candidates for particular position vacancies and must be met for basic eligibility.

S&E (pay plan DR) and Business Management and Professional (pay plan DO) occupations: The DR and DO pay plans' broadband level I minimum eligibility requirements are consistent with the GS–07 qualifications. Broadband level II minimum eligibility requirements are consistent with the GS–12 qualifications. Broadband levels III and IV are single-grade broadband levels and consistent with the minimum qualifications for the respective GS grades of 14 and 15.

Technician (pay plan DX): The DX pay plan broadband level I minimum eligibility requirements are consistent with the GS–01 qualifications. Broadband level II minimum eligibility requirements are consistent with the GS–05 qualifications. Broadband level III minimum eligibility requirements are consistent with the GS–08 qualifications. Broadband IV minimum eligibility requirements are consistent with the GS–11 qualifications.

Mission Support (pay plan DU): The DU pay plan broadband level I minimum eligibility requirements are consistent with the GS–01 qualifications. Broadband level II minimum eligibility requirements are consistent with the GS–05 qualifications. Broadband level III minimum eligibility requirements are consistent with the GS–07 qualifications. Broadband IV minimum eligibility requirements are consistent with the GS–09 qualifications.

3. Appointment Authority

Under the Demonstration Project, there are two appointment options: Regular career and modified term. The career-conditional appointment authority is not used under the Demonstration Project. Regular career appointments continue to use existing authorities and entitlements, and employees serve a probationary period. Probationary career employees are in tenure group I for RIF purposes. The modified term appointment is described below.

4. Modified Term Appointments

The Laboratory conducts many research and development (R&D) projects that range from three to six years. The current four-year limitation on term appointments imposes a burden on the Laboratory by forcing the termination of some term employees prior to completion of projects they were hired to support. This disrupts the R&D process and reduces the Laboratory's ability to serve its customers. Under the Demonstration Project, AFRL has the authority to hire individuals under modified term appointments. These appointments are used to fill positions for a period of more than one year but not more than five years when the need for an employee's services is not permanent. The modified term appointment differs from term employment as described in 5 CFR part 316 in that it may be made for a period not to exceed five years, rather than four years. In addition, the AFRL Commander/Executive Director and pay pool managers are authorized to extend a term appointment one additional year. Employees hired under the modified term appointment authority may be eligible for conversion to career appointments. To be converted, the employee must: (1) Have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career appointment at a later date; (2) served a minimum of two years of continuous service in the term position; (3) be selected under merit staffing procedures for the permanent position; and (4) have a current delta CCS rating greater than -0.3.

Employees serving under regular term appointments at the time of conversion to the Demonstration Project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career appointment if they have a current delta CCS rating greater than -0.3 and are selected under merit staffing procedures for the permanent position after having completed at least two years of continuous service.

5. Extended Probationary Period

A new employee needs time and opportunities to demonstrate adequate contribution for a manager to render a thorough evaluation. The purpose of the extended probationary period or trial period is to allow supervisors an adequate period of time to fully evaluate an employee's contribution and conduct. An extended probationary or trial period of three years applies to all newly hired S&E employees, including individuals entering the Demonstration Project after a break in service of 30 calendar days or more. Employees who enter the Demonstration Project with a break in service of less than 30 calendar days are not required to complete an extended probationary or trial period if their service was in the same line of work as determined by the employee's actual duties and responsibilities. Current permanent Federal employees hired into the Demonstration Project are not required to serve a new probationary or trial period. Any employee appointed prior to the date of this **Federal Register** notice will not be affected. Supervisory probationary periods are made consistent with 5 CFR part 315.

Student Career Experience Program (SCEP) students earning a bachelor's degree are required to serve the extended probationary period upon non-competitive conversion to career appointment. SCEPs earning a master's degree or Ph.D. will have their SCEP employment time counted toward the completion of the extended probationary period upon non-competitive conversion to career appointment. The requirements in 5 CFR 315.802(c) apply when determining creditable service.

Aside from extending the time period, all other features of the current probationary or trial period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee when the employee fails to demonstrate proper conduct, competency, and/or adequate contribution.

When terminating probationary or trial employees, AFRL provides employees with written notification of the reasons for their separation and provides the effective date of the action.

6. Expanded Temporary Promotions and Details

Under GS rules, details and temporary promotions to higher graded positions cannot exceed 120 days without being made competitively. AFRL may effect details to higher broadband level positions and temporary promotions of not more than one year within a 24-month period without competition, with the ability to extend one additional year, to positions within the Demonstration Project. This is similar to the authority granted to the NRL in 64 FR 33970, June 24, 1999.

B. Pay Setting Outside the CCS

Management has authority to establish appropriate basic pay for employees moving within and into the Demonstration Project through internal and external competitive and non-competitive authorities. The basic pay of newly hired personnel entering the Demonstration Project is set at a level consistent with the expected contribution of the position based on the individual's academic qualifications, competencies, experience, scope and level of difficulty of the position, and/or expected level of contribution. Pay pool managers may establish specific pay setting criteria. Basic pay is limited to that equal to GS–15, step 10. A bonus may be considered in lieu of a basic pay increase.

The authorities for retention, recruitment, and relocation payments granted under 5 CFR part 575 have been delegated to the AFRL Commander/Executive Director and pay pool managers. Eligibility and documentation requirements, as described in 5 CFR part 575, are still in effect.

Recruitment of students is currently limited to the local commuting area because college students frequently cannot afford to relocate to accept job offers within the Laboratory and continue to attend school in a different commuting area. Therefore, AFRL requires the ability to expand recruitment to top universities and incentivize mobility by paying additional expenses to students accepting employment outside of their geographic area. The authority to pay relocation bonuses is expanded to allow management to pay a bonus each time the co-operative education student returns to duty to the Laboratory.

1. Local Interns

Outside of the rating cycle, a manager may grant a basic pay increase to an entry-level Business Management and Professional and S&E employee (broadband I) whose contribution justifies accelerated compensation. This is similar to the authority granted to AMRDEC in 62 FR 34876, June 27, 1997.

C. Broadbanding

The use of broadbanding provides a stronger link between pay and contribution to the mission of the Laboratory than what exists in the GS system. It is simpler, less time consuming, and not as costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized career paths, and complements the other personnel management aspects of the Demonstration Project.

In the Demonstration Project, the broadbanding system replaces the GS structure. Initially, only S&E positions in AFRL were covered. This **Federal Register** notice provides the authority to expand coverage of the Demonstration Project to Business Management and Professional, Technician, and Mission Support occupations. ST and SES employees are not covered.

Table 2 shows the four broadband levels in each career path, labeled I, II, III, and IV, with the exception of newly expanded broadband V for the S&E career path. The broadband levels are designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates within the appropriate broadband level(s). The S&E career path broadband level I includes the current GS–07 through GS–11; level II, GS–12 and GS/GM–13; level III, GS/GM–14; level IV, GS/GM–15; and level V, above GS/GM–15. The Business Management and Professional career path broadband level I includes the current GS–07 through GS–11; level II, GS–12 and GS/GM–13; level III, GS/GM–14; and level IV, GS/GM–15. The Mission Support career path broadband level I includes the current GS–01 through GS–04; level II, GS–05 and GS–06; level III, GS–07 and GS–08; and level IV, GS–09 and 10. The Technician career path broadband level I includes the current GS–01 through GS–04; level II, GS–05 through GS–07; level III, GS–08 through GS–10; and level IV, GS–11 and 12. Comparison to the GS grades was useful in setting the upper and lower dollar limits of the broadband; however, once employees are moved into the Demonstration Project, GS grades and steps no longer apply.

TABLE 1. BROADBANDING STRUCTURE

Career Paths	Corresponding GS Grades															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
	Band Structure															
Scientists & Eng.							DR I					DR II		DR III	DR IV	DR V
Business Mgt./Prof.							DO I					DO II		DO III	DO IV	
Mission Support	DU I				DU II			DU III	DU IV							
Technician	DX I					DX II			DX III		DX IV					

The broadbanding plan for the S&E occupational family is being expanded to include a broadband V to provide the ability to accommodate positions having duties and responsibilities that exceed the GS–15 classification criteria. This broadband is based on the Above GS–15 Position concept found in other STRL personnel management

demonstration projects that was created to solve a critical classification problem. The STRLs have positions warranting classification above GS–15 because of their technical expertise requirements including inherent supervisory and managerial responsibilities. However, these positions are not considered to be appropriately classified as ST positions because of the degree of supervision and level of managerial responsibilities. Neither are these positions appropriately classified as SES positions because of their requirement for advanced specialized scientific or engineering expertise and because the positions are not at the level of general managerial authority and impact required for an SES position.

The original Above GS–15 Position concept was to be tested for a five-year period. The number of trial positions was set at 40 with periodic reviews to determine appropriate position requirements. The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness and continued applicability to the current STRL scientific, engineering, and technology workforce needs. The degree to which AFRL plans to participate in this concept and develop classification, compensation and performance management policy, guidance, and implementation processes will be based on the final outcome of this evaluation. Additional guidance will be included in AFRL internal issuances.

D. Classification

1. Occupational Series

The OPM occupational series scheme, which frequently provides well-recognized disciplines with which employees wish to be identified, is maintained and facilitates movement of personnel into and out of the Demonstration Project. Other series may be added to the Project as the need for new competencies emerges within the Laboratory environment.

2. Classification Factors and Descriptors

The present system of OPM classification standards is used for the identification of proper series and occupational titles of positions within the Demonstration Project. OPM grading criteria are not used as part of the Demonstration Project. Rather, the appropriate career path broadband level factor descriptors are used to determine the broadband level. These same factor descriptors are used for the annual CCS employee assessments. For classification, only broadband level I descriptors are applied for each of the factors for a broadband level I position, for example. Therefore, the factors are sorted first by level and then by factor. (The broadband level of the position is reviewed and appropriately adjusted based on a yearly assessment of the employee's level of contribution to the organization in relation to these same factor descriptors, the position's duties, and the corresponding CCS score.) Specific broadband level factor descriptors for each career path are outlined in Appendix B and may be changed in future AFRL internal issuances, as needed.

3. Classification Authority

The AFRL Laboratory Commander has delegated classification authority and may further delegate this authority to no lower than two management levels below the technical director. Classification approval, however, must be exercised at least one management level above the first-level supervisor of the employee or position under review. The first-level supervisor provides classification recommendations. Personnel specialists provide on-going consultation and guidance to managers and supervisors throughout the classification process.

4. Statement of Duties and Experience

Under the Demonstration Project's classification system, the automated Statement of Duties and Experience (SDE) replaces the AF Form 1378, Civilian Personnel Position Description. The SDE includes a description of position-specific information; references the broadband level factor descriptors for the assigned broadband level and career path; and provides data element information pertinent to the position. Laboratory supervisors follow a computer assisted process to produce the SDE.

5. Skill Codes

The AF presently uses skill code sets within the Defense Civilian Personnel Data System (DCPDS) as a means to reflect duties of current positions and employees' competencies and previous experiences. Each code represents a specialization within the occupation. Specializations are those described in classification or qualification standards and those agreed upon by functional managers and personnel specialists to be important to staffing patterns and career paths. These codes may be used to refer candidates for employment with the AF; for placement of current employees into other positions; and for training consideration under competitive procedures. To facilitate the movement of personnel into, out of, and within the Demonstration Project, the AF system of skills coding continues to be used, as long as it is required by the AF. Laboratory supervisors select appropriate skill code sets to describe the work of each employee through the automated SDE classification process, as described below.

6. Classification Process

The SDE is accomplished by completion of the following steps utilizing an automated system:

(a) The supervisor enters, by typing free-form, the organizational location, SDE number, and the employee's name. From the menu, the supervisor selects the appropriate occupational series and title; the level factor descriptors corresponding to the broadband level that is most commensurate with the level of contribution necessary to accomplish the duties and responsibilities of the position; the CCS job category (if applicable); the functional classification code; and the DCPDS supervisory level. For Business Management and Professional and S&E positions, prefixes may be added to the titles to identify the associated broadband level (i.e., Associate, Senior, and Principal). The supervisor then completes a standard statement relating to the level of certification and functional area for the Acquisition Professional Development Program (APDP) if applicable.

(b) The supervisor creates a brief description of position-specific information by typing free-form at the appropriate point. From a menu, the supervisor chooses statements pertaining to physical requirements; competencies required to perform the work; and special licenses or certifications needed (other than APDP). Based on the supervisory level of the position, the system produces mandatory statements pertaining to affirmative employment, safety, and security programs.

(c) The supervisor selects up to three AF skill code sets (as used within the AF) appropriate to the position, in addition to other position data, such as position sensitivity, Fair Labor Standards Act (FLSA) status, drug testing requirements, etc. These data elements are maintained as a separate page of the SDE (*i.e.,* an addendum) as this information can change frequently. By maintaining this information as an addendum, the need to create and classify a new SDE each time one of these elements must be updated is eliminated.

(d) The supervisor accomplishes the SDE with a recommended classification, then signs and dates the document. The

SDE is sent to the individual in the organization with delegated classification authority for approval and classification, which is documented by that person signing and dating the SDE.

The computer assisted system incorporates definitions for the CCS job categories (if applicable), supervisory levels, occupational series as well as their corresponding skill code sets (if applicable), and the functional classification codes as appropriate. The FLSA status selection must be in accordance with OPM guidance. Management analysts and personnel specialists may advise Laboratory management as necessary.

E. Contribution-Based Compensation System (CCS)

1. Overview

The purpose of the Contribution-based Compensation System is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the Laboratory workforce. It is essential for the development of a highly productive workforce and to provide management, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products. CCS allows for more employee involvement in the assessment process, increases communication between supervisors and employees, promotes a clear accountability of contribution, facilitates employee career progression, provides an understandable basis for basic pay changes, and delinks awards from the annual assessment process. (Funds previously allocated for performance-based awards are reserved for distribution under a separate Laboratory awards program.) The CCS process described herein applies to broadband levels I through IV. The assessment process for broadband V positions will be documented in AFRL implementing issuances.

CCS is a contribution-based assessment system that goes beyond a performance-based rating system. That is, it measures the employee's contribution to the organization's mission, the contribution level, and how well the employee performed a job. Contribution is simply defined as the measure of the demonstrated value of what an employee did in terms of accomplishing or advancing the organizational objectives and mission impact. CCS promotes proactive basic pay adjustment decisions on the basis of an individual's overall contribution to the organization.

The same factor descriptors are used for classification and for the annual CCS employee assessments. For the CCS assessment process, the descriptors are sorted first by factor and then by level as shown in Appendix C. The appropriate career path factor descriptors (as shown in Appendix C) are used by the rating official to determine the employee's actual contribution score. Each factor has four levels of increasing contribution corresponding to the four broadband levels. Employees can score within, above, or below their broadband level. For example, a broadband level II employee could score in the broadband level I, III, or IV range. Therefore, for the CCS process, descriptors for all four levels of the career path factors are presented to better assist the supervisor with the employee assessment.

The annual CCS assessment scoring process (section III, E.3.) begins with employee input, which provides an opportunity to state the perceived accomplishments and level of contribution. Scores have a direct relationship with basic pay; therefore, the significance of an employee's actual score is not known until it is compared to his/her expected score. An employee's basic pay determines an expected score when plotted on the appropriate career path Standard Pay Line (SPL) (section III, E.2.). For instance, a Mission Support employee with a basic pay of $30,117 in 2009 would have an expected score of 2.25, while a Business Management and Professional employee with a basic pay of $69,738 would have the same expected score. The comparison between expected score and actual score provides an indication of equitable compensation, undercompensation, or overcompensation. (Typically, employees who are overcompensated are not meeting contribution expectations and may be placed on a Contribution Improvement Plan (CIP), which is described in further detail in section III, F.) Broadband levels in each career path have the same expected score range, as depicted in Table 2 below which also includes the basic pay ranges for each broadband level. As the general basic pay rates increase annually, the minimum and maximum basic pay rates of broadband levels I through IV for each career path are adjusted accordingly. Individual employees receive basic pay increases based on their assessments under the Contribution-based Compensation System. There are no changes to title 5, U.S.C., regarding locality pay under the Demonstration Project.

TABLE 2. BROADBAND SCORE AND 2009 BASIC PAY RANGES BY CAREER PATH

DR Broadband Score and 2009 Basic Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
1	0.75	2.25	$36,322	$69,739
2	1.75	3.25	$58,600	$92,017
3	2.75	4.25	$80,878	$114,295
4	3.75	5.25	$103,156	$136,573*

*Basic salary is limited to GS-15, step 10 (any amount greater is paid in the form of a bonus).

DO Broadband Score and 2009 Basic Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
1	0.75	2.25	$36,322	$69,739
2	1.75	3.25	$58,600	$92,017
3	2.75	4.25	$80,878	$114,295
4	3.75	5.25	$103,156	$136,573*

*Basic salary is limited to GS-15, step 10 (any amount greater is paid in the form of a bonus).

DX Broadband Score and 2009 Basic Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
1	0.75	2.25	$13,664	$36,923
2	1.75	3.25	$29,170	$52,429
3	2.75	4.25	$44,676	$67,935
4	3.75	5.25	$60,182	$83,441

DU Broadband Score and 2009 Basic Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
1	0.75	2.25	$14,871	$30,888
2	1.75	3.25	$25,549	$41,566
3	2.75	4.25	$36,227	$52,244
4	3.75	5.25	$46,905	$62,922

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2. Standard Pay Line (SPL)

A mathematical relationship between assessed contribution and basic pay compensation was defined in order to create the SPLs for each career path used in CCS. Initially, various mathematical relationships between each CCS score and the appropriate corresponding basic pay rate were examined and analyzed given the following systemic constraints. First, CCS necessitates that the relationship be described by a single equation that yields a reasonable correlation between basic pay rates in the broadband levels and those of the corresponding GS grade(s). Second, neither the equation nor its derivative(s) can exhibit singularities within or between levels. That is, the equation must be continuous, smooth, and well-defined across the broadband levels within each career path. Third, the relationship may not yield disincentives or inequities between employees or groups of employees; it must demonstrate equitable (*i.e.,* consistent) growth at each CCS score. Mathematical analysis demonstrated that the most reasonable relationship is a straight line—"the SPL."

Derivation of the initial S&E career path SPL was based on distributing the GS grades and steps of the incoming population across the corresponding broadband levels and plotting these against the GS basic pay rates. Although the data are not continuous, there is a linear trend. Each of these data points was weighted by the actual calendar year 1995 (CY95) population data for the Demonstration Laboratory. Using a "least squares error fit" analysis, the best straight line fit to this weighted data was computed.

Specifically, the equation of the original S&E SPL for CY95 was: BASIC PAY = $13,572 + ($15,415 × CCS SCORE). The SPL for CY96 was calculated from the SPL for CY95 plus the general pay increase ("G") given to GS employees in January 1996. The equation for the CY96 SPL was: BASIC PAY = $13,843 + ($15,723 × CCS SCORE). The CY97 SPL was the CY96 SPL increased by the "G" for CY97.

Currently, the equation for the 2009 S&E SPL is BASIC PAY = $19,613 + ($22,278 × CCS SCORE). Figure 1 provides a pictorial representation of the DR 2009 SPL. Since the Business Management and Professional career path has the same banding structure as the existing S&E career path, the same SPL equation is used for that career path as shown in Figure 2.

FIGURE 1. CCS RELATIONSHIP - S&E CAREER PATH

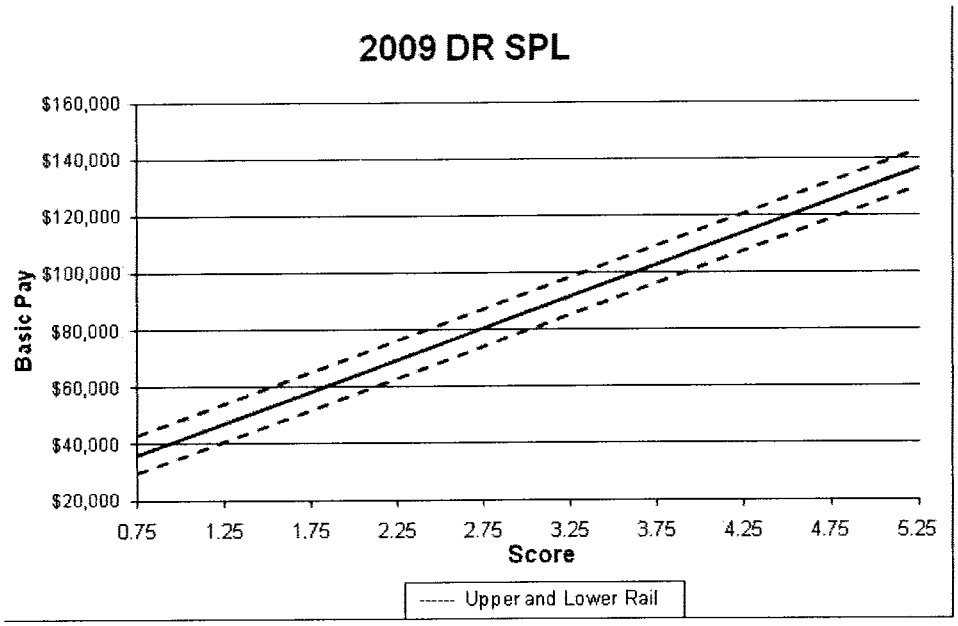
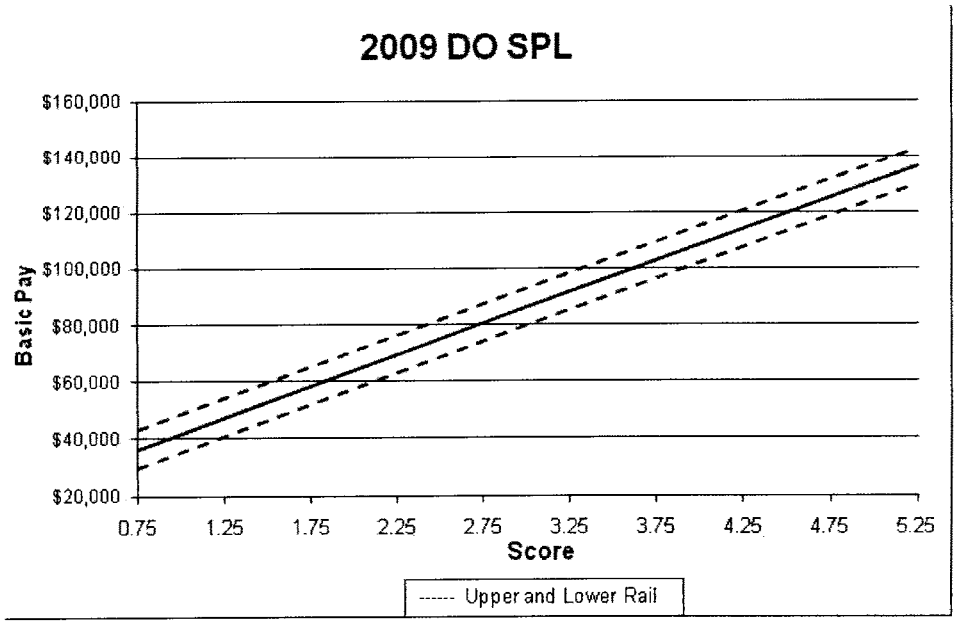


FIGURE 2. CCS RELATIONSHIP - BUSINESS MANAGEMENT AND PROFESSIONAL CAREER PATH



For the other two career paths, Technician and Mission Support, a different approach was used to design the SPL. In order to encompass all employees across the career path, a straight-line slope-intercept equation

was utilized. A CCS score of 1.0 was set as equivalent to the basic pay of a step one of the lowest GS grade in the career path, while a CCS score of 4.9 is equivalent to the basic pay of step ten of the highest GS grade. A straight line was then drawn between these two points, creating the SPL. Consequently, the 2009 Mission Support SPL is BASIC PAY = $2,034 + ($15,506 × CCS SCORE) and the 2009 Technician SPL is BASIC PAY = $6,862 + ($10,678 × CCS SCORE) as shown in Figures 3 and 4.

FIGURE 3 CCS RELATIONSHIP - MISSION SUPPORT CAREER PATH

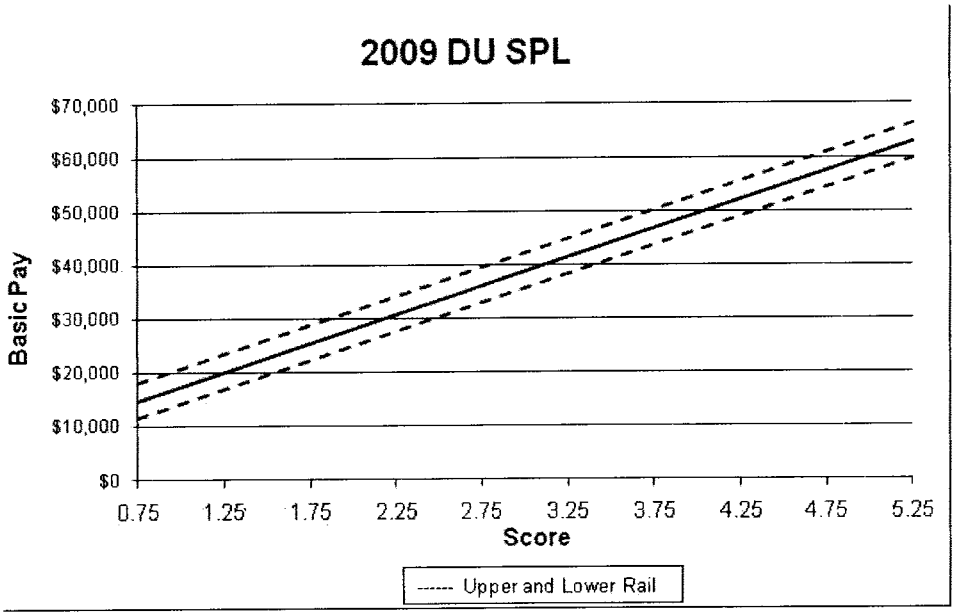
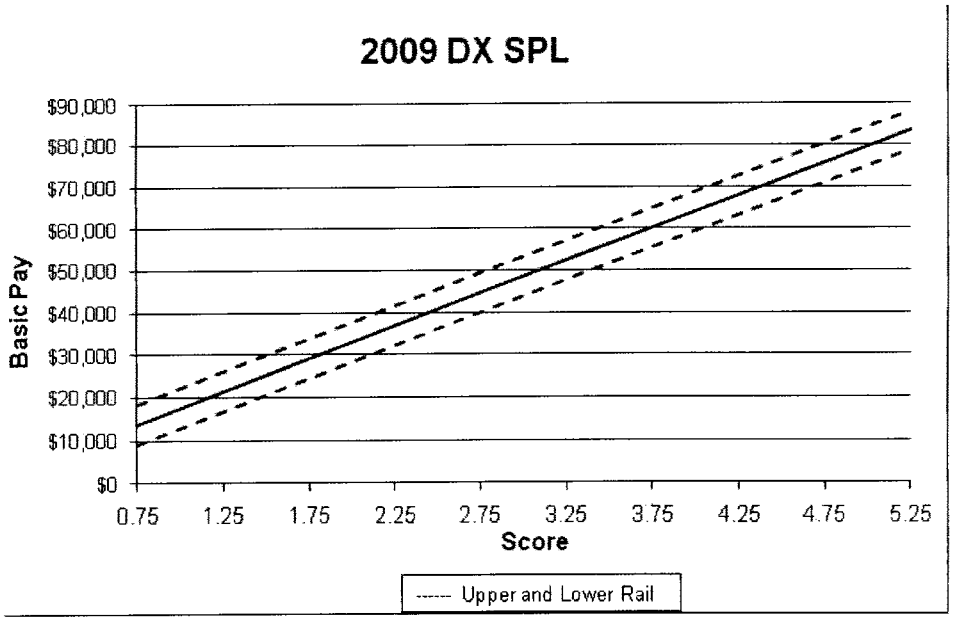


FIGURE 4. CCS RELATIONSHIP - TECHICIAN CAREER PATH



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For each of the career paths, the lines were extended to 0.75 and 5.25, in order to provide a broader range of basic pay rates (*i.e.,* an overall score of 0.75

corresponds with the minimum basic pay of the career path and an overall score of 5.25 corresponds with the maximum basic pay of the career path). Rails were then constructed at + and − 0.3 CCS around the SPL for all career paths. The area encompassed by the rails denotes the acceptable contribution and compensation relationship.

Each SPL, and therefore, the basic pay rates, are increased by the amount of the general basic pay increase authorized each year. Continuing this calculation of the SPL maintains the same relationships between the basic GS pay scale and the SPL in the Demonstration Project. Locality pay is not included in the SPLs. Locality pay is added to the basic pay rate based upon each employee's official duty station.

3. The CCS Assessment Process

The rating official is the first-level supervisor of record for at least 90 days during the rating cycle. If the current immediate supervisor has been in place for less than 90 days during the rating cycle, the second-level supervisor serves as the initial rating official. If the second-level supervisor is in place for less than 90 days during the rating cycle, the next higher level supervisor in the employee's rating chain conducts the assessment.

The annual assessment cycle begins on October 1 and ends on September 30 of the following year. At the beginning of the annual assessment period, the broadband level factor descriptors are provided to employees so that they know the basis on which their contribution is assessed.

A midyear review, in the March to April timeframe, is conducted for employees. At this time, the employee's professional qualities, competencies, developmental needs, and mission contribution are discussed, as is future development and career opportunities. Additionally, supervisors are provided feedback on their supervisory qualities and skills. To highlight its importance, all feedback sessions are certified as completed by the rating official conducting the feedback session. While one documented formal midyear feedback is required, supervisors can/should conduct informal feedback sessions throughout the rating period. The preferable method for all feedback sessions is face-to-face. (Dealing with inadequate employee contribution is addressed in section III, F.)

At the end of the annual assessment period, employees summarize their contributions in each factor for their rating official. Employee written self-assessments are highly encouraged to ensure that all contributions accomplished during the rating cycle are identified to management for consideration. The rating official determines preliminary CCS scores using the employee's input and the rating official's assessment of the overall contribution to the Laboratory mission based on the appropriate broadband level factor descriptors. For each factor, the rating official places the employee's contribution at a particular broadband level (I, II, III, or IV) and general range (i.e., high, medium, or low) to arrive at the preliminary score. (Inadequate employee contribution is addressed in section III, F.)

The rating officials (*e.g.,* branch chiefs) and their next level supervisor (*e.g.,* the respective division chief) then meet as a group (*e.g.,* first-level Meeting of Managers (MoM)) to review and discuss all proposed employee assessments and preliminary CCS scores. Giving authority to the group of managers to determine scores ensures that contributions are assessed and measured similarly for all employees. During the MoMs, the preliminary factor scores are further refined into decimal scores. For example, if the contribution level for a factor is at the lowest level of level I, a factor score of 1.0 is assigned. Higher levels of contribution are assigned factor scores increasing in 0.1 increments up to 4.9. A factor score of 0.0 can be assigned if the employee does not demonstrate a minimum level I contribution. Likewise, a factor score of 5.9 can be assigned if the employee demonstrates a contribution that exceeds the broadband level IV descriptor. Rating officials must document justification for each proposed factor score.

Factor scores are then averaged to give an overall CCS score. Each broadband range is defined for overall CCS scores from 0.75 to 5.25 as shown in Table 2. The maximum overall CCS score for broadband level IV is set at 5.25, to be consistent with the maximum overall CCS scores for other broadband levels (4.25 for broadband level III, 3.25 for broadband level II, and 2.25 for broadband level I). Therefore, when the average of CCS factor scores exceeds 5.25, the overall CCS score is set to 5.25 with the individual identified to upper management as having exceeded the maximum contribution defined by the broadband. The maximum compensation for each broadband is the basic pay corresponding with a n.25 overall CCS score (*i.e.,* 2.25, 3.25, 4.25, and 5.25).

Once the scores have been finalized, the pay pool manager approves the scores for the entire pay pool. Pay pool managers have the ability to look across the entire pay pool and may address anomalies through the appropriate management chain. However, CCS scores cannot be changed by managerial levels above the original group of supervisors that participated in the respective lowest level MoM. Contribution feedback and any training and/or career development needs are then discussed with the individual employees.

If, on October 1, the employee has served under CCS for less than 90 days, the rating official waits for the subsequent annual cycle to assess the employee. The employee is considered "presumptive due to time" and is assigned a score at the intersection of their basic pay and the SPL. Periods of approved, paid leave are counted toward the 90-day time period.

When an employee cannot be evaluated readily by the normal CCS assessment process due to special circumstances that take the individual away from normal duties or duty station (e.g., long-term full-time training, reserve military deployments, extended sick leave, leave without pay, etc.), the rating official documents the rating as "presumptive due to circumstance" in the CCS software. The rating official then assesses the employee using one of the following options:

(a) Recertify the employee's last contribution assessment; or

(b) Assign a score at the intersection of the employee's basic pay and the SPL.

Basic pay adjustments, i.e., decisions to give or withhold basic pay increases, are based on the relationship between the employee's actual CCS contribution score and the employee's current basic pay (as discussed in section III, E.5). Decisions for broadband movement (section III, E.6.) are also based on this relationship. Final pay determinations and broadband level changes are made by the pay pool manager.

4. Pay Pools

Pay pool structure is under the authority of the Laboratory Commander/Executive Director, with each pay pool manager at the SES or full colonel level. The following minimal guidelines apply: (a) A pay pool is typically based on the organizational structure/functional specialty and should include a range of basic pay rates and contribution levels; (b) a pay pool must be large enough to constitute a reasonable statistical sample, *i.e.,* 35 or more employees; (c) a pay pool must be large enough to encompass a second level of supervision since the CCS process uses a group of supervisors in the pay pool to determine assessments

and recommend basic pay adjustments; (d) the pay pool manager holds yearly pay adjustment authority; and (e) neither the pay pool manager nor supervisors within the pay pool recommend or set their own individual pay.

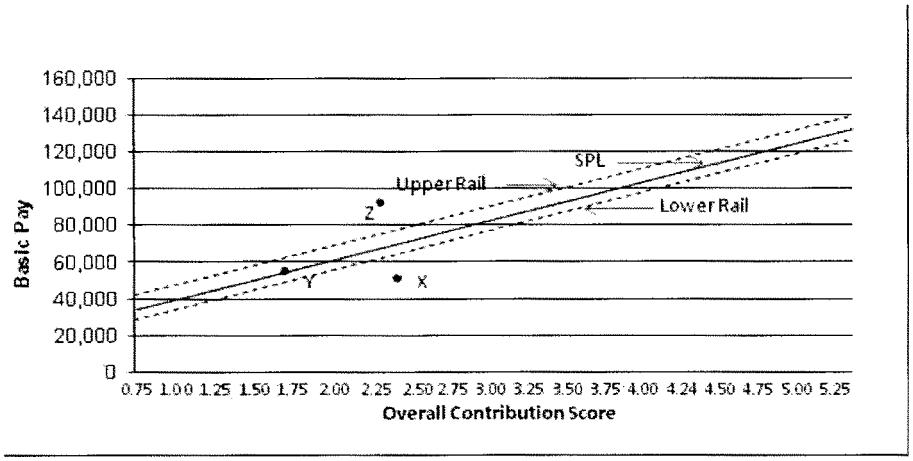
The amount of money available for basic pay increases within a pay pool is determined by the general increase ("G") and an incentive amount ("I") drawn from money that would have been available for step increases and career ladder promotions, previously utilized under the General Schedule. The incentive amount is set by the AFRL Corporate Board and is considered adjustable to ensure cost discipline over the life of the Demonstration Project. The dollars derived from "G" and "I" included in the pay pool are computed based on the basic pay of eligible employees in the pay pool as of September 30 of each year. Pay pool dollars are not transferable between pay pools.

5. Basic Pay Adjustment Guidelines

The maximum compensation is limited to GS–15, step 10, basic pay. Any employee who's basic pay would exceed a GS–15, step 10, based on his or her overall CCS score, will be identified to upper management as having exceeded the maximum allowable compensation and will be paid a bonus to cover any difference between the GS–15, step 10, basic pay and the basic pay associated with his or her overall CCS score. Locality pay is added based upon each Demonstration Project employee's official duty station.

Employees' annual contributions are determined by the CCS process described in section E.3. Their CCS scores are then plotted on the appropriate SPL graph based on their current basic pay as shown in Figure 5. The position of those points in relation to the SPL provides a relative measure (Delta Y) of the degree of overcompensation or undercompensation for each employee. This permits all employees within a pay pool to be rank-ordered by ΔY, from the most undercompensated employee to the most overcompensated.

FIGURE 5. EMPLOYEE POSITIONING



In general, those employees who fall below the SPL (indicating undercompensation, for example, employee X in Figure 5) should expect to receive greater basic pay increases than those who fall above the line (indicating overcompensation, for example, employee Z). A CCS assessment that falls on either rail is considered to be within the rails. Over time, employees will migrate closer to the standard pay line. The following provides more specific guidelines: (a) Those who fall above the upper rail (for example, employee Z) are given an increase ranging from zero to a maximum of "G;" (b) those who fall within the rails (for example, employee Y) are given a minimum of "G;" and (c) those who fall below the lower rail (for example, employee X) are given at least their basic pay times "G" and "I." If the pay increase results in a broadband movement for employees who do not meet APDP requirements that portion of the increase that takes them beyond the top of the broadband is withheld. The pay pool manager may give a bonus to an employee as compensation, in whole or part, to cover any difference between the employee's current basic pay and the basic pay associated with their new overall CCS score. This may be appropriate in a situation when the employee's continued contribution at this level is uncertain. Bonus criteria will be documented in AFRL implementing issuances.

Each pay pool manager sets the necessary guidelines for the gradation of pay adjustments in the pay pool within these general rules: (1) Final decisions are standard and consistent within the pay pool; (2) are fair and equitable to all stakeholders; (3) maintain cost discipline over the Project life; and (4) be subject to review.

6. Broadband Level Movements

Under the Demonstration Project, non-competitive broadband movement may occur once a year during the CCS process, if certain conditions are met. A key concept of the Demonstration Project is that career growth may be accomplished by movement through the broadband levels by significantly increasing levels of employee contribution toward the AFRL mission. An employee's contribution is a reflection of his/her CCS score, which is derived from the factor descriptors. Because the factor descriptors are written at progressively higher levels of work and are the same factor descriptors used in the classification process, higher scores reflect that the employee's contribution is equivalent to the level associated with the score he/she is awarded. The broadband level of a position may be increased when an employee consistently contributes at the higher broadband level through increased expertise and by performing expanded duties and responsibilities commensurate with the higher broadband level factor descriptors. If an employee's contributions impact and broaden the scope, nature, intent and expectations of the position and are reflective of higher level factor

descriptors, the classification of the position is updated accordingly. This form of movement through broadband levels is referred to as a seamless broadband movement and can only happen within the same career path; employees cannot cross over career paths through this process. The criteria is similar to that used in an accretion of duties scenario and must be met for an employee to move seamlessly to the higher broadband level and for this movement to occur, that is: (1) The employee's current position is absorbed into the reclassified position, with the employee continuing to perform the same basic duties and responsibilities (although at the higher level); and (2) the employee's current position is reclassified to a higher broadband level as a result of additional higher level duties and responsibilities. No additional broadband movement is guaranteed since there are no positions targeted to a higher broadband level within this system. It may take a number of years for contribution levels to increase to the extent a broadband level move is warranted, and not all employees achieve the increased contribution levels required for such moves.

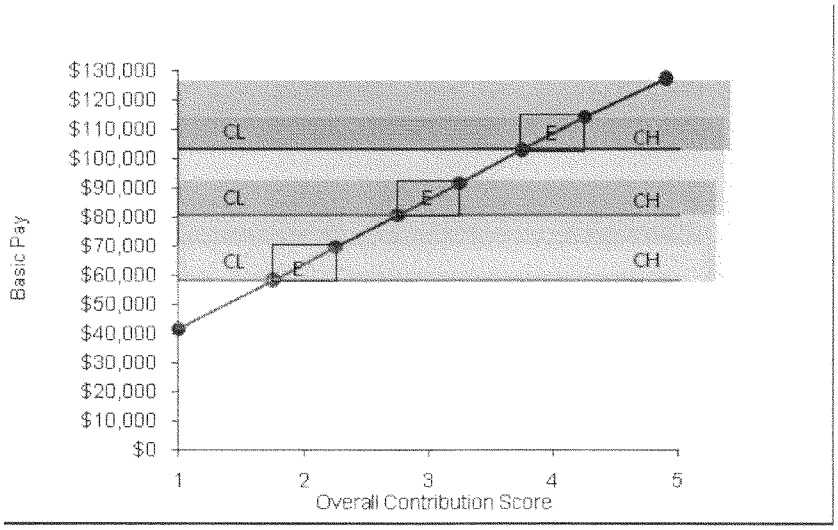
The simplified classification and broadbanding structure allows management to assign duties consistent with the broadband level of a position without the necessity to process a personnel action and provides managers authority to move employees between positions within their current broadband level, at any time during the year. However, management also has the option to fill vacancies throughout the year using various staffing avenues, to include details, reassignments, or competitive selection procedures (as applicable and/or required) for competitive promotions or temporary promotions (typically used for filling supervisory positions). Employees may be considered for vacancies at higher broadband level positions consistent with the Demonstration Project competitive selection procedures.

Any resulting changes in broadband levels that occur through the CCS process are not accompanied by pay increases normally associated with formal promotion actions, but rather, they are processed and documented with a pay adjustment action to include appropriate changes/remarks (*e.g.,* change in title (if appropriate), change in broadband level, and accomplishment of a new SDE (section III, D.6.). The terms "promotion" and "demotion" are not used in connection with the CCS process.

The banding structure creates an overlap between adjacent broadband levels which facilitates broadband movement. Specifically, the basic pay overlap between two levels is defined by the basic pay rates at − to + 0.25 CCS around two whole number scores. For instance, the minimum basic pay for a broadband level I is that basic pay from the SPL corresponding to a CCS score of 0.75. And the maximum basic pay for broadband level I is that basic pay from the SPL corresponding to a CCS score of 2.25. The minimum basic pay for a broadband level II is that basic pay from the SPL corresponding to a CCS score of 1.75. And the maximum basic pay for broadband level II is that basic pay from the SPL corresponding to a CCS score of 3.25. Likewise, the minimum basic pay for level III would be the basic pay from the SPL corresponding to a CCS score of 2.75 and so on for the different broadband levels. This definition provides a basic pay overlap between broadband levels that is consistent with and similar to basic pay overlaps in the GS schedule.

Figure 6 shows the basic pay overlap areas between broadband contribution levels. These basic pay overlap areas are divided into three zones designated as CL (consideration for change to lower level), CH (consideration for change to higher level), and E (eligible for change to higher or lower level). All the E zones have the same width, 0.5 CCS, and height. The E zone is described as the box formed by the intersection of the integer + and −0.25 CCS lines and the SPL.

FIGURE 6. OVERLAP AREAS (EXAMPLE OF S&E AND BUSINESS MANAGEMENT AND PROFESSIONAL SPL*s*)



The E zones serve to stabilize the movement between adjacent broadband levels. This allows for annual fluctuations in contribution scores for people near the top or bottom of a level, without creating the need for repeated broadband level changes. An employee whose contribution score falls within an E zone is eligible for a change in broadband level but one should not be given unless the supervisor has a compelling reason to request the change

to increase or reduce the employee's level.

Those who consistently achieve increased contribution assessments progress through their broadband level and find their basic pay climbing into the corresponding CH zone. Once the employee's CCS score is demonstrated to be consistently within the CH zone, a pay pool determination should be made as to whether the criteria for movement to a higher broadband level is justified unless the supervisor has a compelling reason not to request the change (*e.g.,* temporary assignment; not a continuing assignment; unique circumstances for specific rating period, etc.). Conversely, regression through the broadband levels works the same way in the opposite direction. Those who consistently receive decreasing contribution assessments regress through their broadband level and do not receive any basic pay adjustments greater than "G." They will find that the CL zone at the bottom of their current broadband level eventually aligns with their current basic pay. If the employee's CCS score is demonstrated to be consistently within the CL zone, a pay pool determination should be made as to whether the employee should be moved to the lower broadband level unless the supervisor has a compelling reason not to request the change (*e.g.,* temporary assignment; not a continuing assignment; unique circumstances for specific rating period; etc.). If an employee moves completely above the CH zone or below the CL zone, the employee is considered to be in the mandatory zone and is automatically moved in broadband level, as long as APDP requirements are met (if applicable). If APDP requirements are not met, that portion of the basic pay increase that takes them beyond the top of the broadband is withheld.

7. Voluntary Pay Reduction and Pay Raise Declination

Under CCS, an employee may voluntarily request a pay reduction or a voluntary declination of a pay raise which would effectively place an overcompensated employee's pay closer to or below the SPL. Since an objective of CCS is to properly compensate employees for their contribution, the granting of such requests is consistent with this goal. Under normal circumstances, all employees should be encouraged to advance their careers through increasing contribution rather than being undercompensated at a fixed level of contribution.

To handle these special circumstances, employees must submit a request for voluntary pay reduction or pay raise declination during the 30-day period immediately following the annual payout and document the reasons for the request. Management must properly document all decisions to approve or disapprove such requests. This type of basic pay change is not considered to be an adverse personnel action.

8. CCS Grievance Procedures

An employee may grieve the assessment received under CCS, using the administrative grievance system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure which does not permit grievances over performance ratings, must file assessment grievances under administrative grievance procedures. Bargaining unit employees, whose negotiated grievance procedures cover performance rating grievances, must file assessment grievances under those negotiated procedures. Additional CCS grievance information to include the possible use of Alternative Dispute Resolution is documented in AFRL implementing issuances.

F. Dealing With Inadequate Contribution

CCS is a contribution-based assessment system that goes beyond a performance-based rating system. Contribution is measured against factors, each having four levels of increasing contribution corresponding to the four broadband levels. Employees are plotted against the SPL based on their score and current basic pay, which determines the amount of overcompensation or undercompensation. When an employee's contribution plots in the area above the upper rail of the SPL (section III, E.3.), the employee is overcompensated for his/her level of contribution and is considered to be in the Automatic Attention Zone (AAZ).

This section addresses reduction in pay or removal of Demonstration Project employees based solely on inadequate contribution, as determined by the amount of overcompensation. The following procedures are similar to and replace those established in 5 CFR part 432 pertaining to performance-based reduction in grade and removal actions. Adverse action procedures under 5 CFR part 752 remain unchanged.

The immediate supervisor has two options when an employee plots in the AAZ. The first option is to write a memorandum for record documenting the employee's inadequate contributions. The supervisor states in writing the specifics on where the employee failed to contribute at an adequate level and provide rationale for not taking a formal action. Examples where this might be used is when an employee's contribution plots just above the upper rail of the SPL or extenuating circumstances exist that may have contributed to the employee's overall score and are expected to be temporary in nature. A copy of this memorandum is provided to the employee and to higher levels of management. The second option is to take formal action by placing the employee on a Contribution Improvement Plan (CIP), providing the employee an opportunity to improve. The CIP must inform the employee, in writing, that unless the contribution increases and is sustained at a higher level, the employee may be reduced in pay or removed.

The supervisor will afford the employee a reasonable opportunity (a minimum of 60 days) to demonstrate increased contribution commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate increased contribution, management will offer appropriate assistance to the employee.

Once an employee has been afforded a reasonable opportunity to demonstrate increased contribution, but fails to do so, management has sole and exclusive discretion to initiate reduction in pay or removal. If the employee's contribution increases to a higher level and is again determined to deteriorate in any area within two years from the beginning of the opportunity period, management has sole and exclusive discretion to initiate reduction in pay or removal with no additional opportunity to improve. If an employee has contributed appropriately for two years from the beginning of an opportunity period and the employee's overall contribution once again declines, management will afford the employee an additional opportunity to demonstrate increased contribution before determining whether or not to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to at least a 30-day advance notice of the proposed action that identifies specific instances of inadequate contribution by the employee on whom the action is based. Management may extend this advance notice for a period not to exceed an additional 30 days. Management will afford the employee a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce pay or remove an employee for inadequate contribution may only be based on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the notice of proposed action. Management will issue written notice of its decision to the employee at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights as specified in 5 CFR 432.106.

Management will preserve all relevant documentation concerning a reduction in pay or removal which is based on inadequate contribution and make it available for review by the affected employee or designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary thereof when the employee makes an oral reply; and the written notice of decision and the reasons therefore, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate increased contribution.

When a reduction in pay or removal action is not taken because of contribution improvement by the employee during the notice period and the employee's contribution continues to be deemed adequate for two years from the date of the advanced written notice, any entry or other notation of the proposed action will be removed from management records relating to the employee, in accordance with applicable directives.

These provisions also apply to an employee whose contribution deteriorates during the year. In such instances, the group of supervisors who meet during the CCS assessment process may reconvene any time during the year to review an employee whose contribution is not appropriate for his or her basic pay and decide if the employee should be placed on a CIP.

G. Voluntary Emeritus Corps

Under the Demonstration Project, the AFRL Laboratory Commander/Executive Director and pay pool managers have the authority to offer retired or separated S&E, Business Management and Professional, Mission Support, and Technical employees voluntary assignments in the Laboratory. The Voluntary Emeritus Corps ensures continued quality research, mentoring, support, and program management while reducing the overall basic pay line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the laboratory community. The program is beneficial during manpower reductions as senior personnel accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. (This authority is similar in nature to that utilized by S&Es in AFRL and described in the CERDEC demonstration project plan, 66 FR 54871, October 30, 2001.)

This authority includes employees who have retired or separated from Federal service. Voluntary Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of on-the-job injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service.

To be accepted into the Emeritus Corps, a volunteer must be recommended by a manager within the Laboratory. Everyone who applies is not automatically entitled to a voluntary assignment. The Laboratory Commander/Executive Director and/or pay pool manager must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained according to applicable records management requirements.

To encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity.

Volunteers are not permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists.

An agreement is established between the volunteer, the pay pool manager, and the servicing Civilian Personnel Office. The agreement is reviewed by the local Staff Judge Advocate representative responsible for ethics determinations under the DoD Joint Ethics Regulation, DoD 5500.7–R. The agreement must be finalized in advance and shall include as a minimum:

(a) A statement that the voluntary assignment does not constitute an appointment in the Civil Service and is without compensation;

(b) The volunteer waives any and all claims against the Government because of the voluntary assignment except for purposes of on-the-job injury compensation as provided in 5 U.S.C. 8101(1)(B);

(c) Volunteer's work schedule;

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) Support provided by the Laboratory (travel, administrative, office space, supplies);

(f) A one page SDE;

(g) A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Corps;

(h) A provision allowing either party to void the agreement with ten working days written notice; and

(i) The level of security access required (any security clearance required by the assignment is managed by the Laboratory while the volunteer is a member of the Emeritus Corps).

H. Reduction-in-Force (RIF) Procedures

The competitive area may be determined by career paths (pay plans), lines of business, product lines, organizational units, funding lines, occupational series, functional area, technical directorate, and/or geographical location, or a combination of these elements, and must include all Demonstration Project employees within the defined competitive area. The RIF system has a single round of competition to replace the current two-round process. Once the position to be abolished has been identified, the incumbent of that position may displace another employee when the incumbent has a higher retention standing and is fully qualified for the position occupied by the employee with a lower standing.

Retention standing is based on tenure, veterans' preference, overall CCS score, and length of service. There is no augmented service credit based on contribution scores. Probationary career employees are in tenure group I for RIF purposes. Modified term appointment employees are in tenure group III for RIF purposes.

Displacement is limited to one broadband level below the employee's present level within the career path. Broadband level I employees can displace within their current broadband level. A preference eligible employee with a compensable service connected disability of 30 percent or more may displace up to two broadband levels below the employee's present level within the career path. A broadband level I preference eligible employee (with a compensable service connected disability of 30 percent or more) can displace within their current broadband. Employees bumped to lower broadband levels maintain their existing basic pay

for the remainder of the current CCS cycle. Any future basic pay increases are dependent upon CCS assessments.

An employee whose current overall CCS scores places him/her in the area above the upper rail, may only displace an employee in the same zone during that same period. The same "undue disruption" standard currently utilized serves as the criteria to determine if an employee is fully qualified. The displaced individual may similarly displace another employee. If/When there is no position in which an employee can be placed by this process or assigned to a vacant position, that employee will be separated.

After completion of the first rating cycle, employees are provided credit for contribution based on their actual overall contribution scores. After completion of the second rating cycle, employees are provided contribution credit based on the average of their last two contribution scores. After completion of the third rating cycle, employees are provided contribution credit based on the average of their last three contribution scores. The expected CCS score is used for employees who have not yet received a CCS assessment.

IV. Training

An extensive training program is currently in place for participants in the Demonstration Project. Supervisory training is required for all new supervisors of Demonstration Project employees, to include comprehensive CCS training, providing effective CCS feedback training, and CCS software training. Additional training is planned for and will be made available to support personnel and every employee who converts into the Demonstration Project. Training will adequately describe the features as they pertain to each career path and will address employee concerns to ensure that everyone has a comprehensive understanding of the program. Training requirements vary from an overview of the Demonstration Project, to a more detailed package for the employees now entering the Demonstration Project, as well as very specific instructions for both civilian and military supervisors, managers, and others who provide personnel and payroll support.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the Demonstration Project for covered employees is accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate broadband level without loss of pay. Adverse action provisions do not apply to the conversion process as there is no change in total adjusted pay. Generally, employees are converted into the broadband level which includes their permanent GS/GM grade of record.

Under the GS pay structure, employees progress through their assigned grade in step increments. In the Demonstration Project, basic pay progression through the levels depends on contribution to the mission and there are no scheduled within-grade increases (WGIs). Rules governing WGI under the current AF performance plan will continue in effect until the implementation date. Adjustments to the employees' basic pay for WGI equity will be computed effective the date of conversion. WGI equity is acknowledged by increasing basic pay rates by a prorated share based upon the number of days an employee has completed towards the next higher step. Employees at step ten on the date of implementation are not eligible for WGI equity adjustments since they are already at the top of the step scale. As under the GS system, supervisors are able to withhold these partial step increases if the employee's performance has fallen below fully successful.

All employees are eligible for future locality pay increases of the geographical areas of their official duty station. Special Salary Rates are not applicable to Demonstration Project employees. Employees on special salary rates at the time of conversion receive a new basic pay rate which is computed by dividing their highest adjusted basic pay (i.e., special pay rate or, if higher, the locality rate) by the computation of one plus the locality pay factor for their area. Multiply the new basic pay rate by the locality pay factor and add the result to the new basic pay rate to obtain the adjusted basic pay, which is equal to the preconversion adjusted basic pay.

Grade and pay retention entitlements are eliminated. At the time of conversion, an employee on grade retention will be converted to the career path and broadband level based on the assigned permanent position of record, not the retained grade. The employee's basic pay and adjusted basic pay while on grade retention status will be used in setting appropriate pay upon conversion and in determining the amount of any WGI buy-in. An employee's adjusted basic pay will not be reduced upon conversion.

In order to ensure full employee compensation toward previous performance, AFRL may conduct a GS annual or close-out appraisal which may include a performance award. If an annual CCS assessment is not possible due to the conversion date (*i.e.,* less than a 90-day evaluation period), employees will be entitled to the general pay increase typically effective in January.

B. Conversion to Another Personnel System

Employees who leave the AFRL broadbanding system to accept Federal employment in another personnel system will have their pay set by the gaining activity. In the event the Project ends, a conversion back to the former or applicable Federal Civil Service system may be required. These conversion rules are to be used to determine the corresponding GS rates (if applicable). Where a broadband level includes a single GS grade, employees are considered to have attained the grade commensurate with the broadband level they are leaving. Where broadband levels include multiple grades, employees are considered to have progressed to the next higher grade within that broadband level when they have been in the level for one year and their basic pay equals or exceeds the minimum basic pay of the higher grade. For employees who are entitled to a special rate upon conversion, the Demonstration Project locality rate must equal or exceed the minimum special rate of the higher grade.

To set GS pay upon conversion, an employee's Demonstration Project locality rate is converted (prior to leaving the Project) to the highest GS rate range (*i.e.,* locality rate range or special rate range) applicable to the employee. If the employee's rate falls between the fixed rates for the applicable range, it is raised to the next higher rate. The employee's GS basic rate (excluding special rates or locality payments) is then derived based on the grade and step associated with this converted rate.

VI. Project Duration and Changes

Public Law 103–337 removed any mandatory expiration date for this Demonstration Project. The Project evaluation plan adequately addresses how each intervention is comprehensively evaluated.

Many aspects of a Demonstration Project are experimental. Minor modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. Flexibilities published in this **Federal Register** notice shall be available for use by all STRLs, if they wish to adopt them.

VII. Evaluation Plan

Authorizing legislation mandates evaluation of the Demonstration Project to assess the merits of Project outcomes and to evaluate the feasibility of applications to other Federal organizations. The overall evaluation consists of two components—external and internal evaluation. The external evaluation for the AF Laboratory Demonstration is part of a larger effort involving evaluation of demonstration projects in reinvention laboratories in three military services. External evaluation was originally overseen by the Office of Merit Systems Oversight and Effectiveness, OPM, and the Director, Defense Research and Engineering (DDR&E) and Civilian Personnel Policy (CPP), DoD. OPM's Personnel Resources and Development Center (PRDC) served as external evaluator for the first five years of the Project to ensure the integrity of the evaluation process, outcomes, and interpretation of results. After the five-year point decision to continue the Demonstration Project, AFRL opted out of OPM's external evaluation effort and continued its own internal evaluation. AFRL intends to continue the same level of evaluation with the addition of the expanded project coverage.

The main purpose of the evaluation is to determine the effectiveness of the personnel system changes as they are expanded to cover additional segments of the AFRL population and to ensure that there are no unintended adverse outcomes of the changes. To the extent possible, cause-and-effect relationships between the changes and personnel system effectiveness criteria will be established. The evaluation approach uses the intervention impact model shown in Table 3, which specifies each personnel system change as an intervention; the expected effects of each intervention; the corresponding measures of these effects; and the data sources for obtaining the measures.

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TABLE 3. INTERVENTION IMPACT EVALUATION MODEL

INTERVENTIONS	EXPECTED EFFECTS	MEASURES	DATA SOURCES
1. Compensation			
a. Broadbanding	A. Increased organizational Flexibility	1. Perceived flexibility	Attitude survey
	B. Reduced administrative work load, paperwork reduction	1. Actual/perceived time savings	Personnel office data, attitude survey
	C. Advanced in-hire rates	1. Starting basic pay rates of banded vs. non-banded employees	Work force data
	D. More gradual pay progression at entry levels	1. Progression of new hires over time by band, career path	Work force data
	E. Increased pay potential/ higher average basic pay	1. Mean basic pay rates by band, career path, demographics	Work force data
	F. Increased satisfaction with Advancement	1. Employee perceptions of advancement	Attitude survey
	G. Increased pay satisfaction	1. Pay satisfaction, internal/external equity	Attitude survey
	H. Improved recruitment	1. Offer/acceptance ratios	Personnel office data
		2. Percent declinations	Personnel office data
b. Conversion buy-in and buy-up to minimum for band	A. Employee acceptance	1. Employee perceptions of equity, fairness	Attitude survey
		2. Cost as a percent of payroll	Work force data
2. Contribution/Performance Management and Assessment			
a. Cash awards/ bonuses	A. Reward/motivate contribution/performance	1. Amount and number of awards by career path, demographics performance	Work force data
		2. Perceived motivational power	Attitude survey
		3. Perceived fairness of awards	Attitude survey
b. Contribution-based pay progression	A. Increased pay-contribution link	1. Pay-contribution correlations	Work force data
		2. Perceived pay-contribution link	Attitude survey
		3. Perceived fairness of ratings	Attitude survey
		4. Satisfaction with ratings	Attitude survey
		5. Employee trust in supervisors	Attitude survey
	B. Improved contribution/ performance feedback	1. Effectiveness of contribution/ performance feedback	Attitude survey
	C. Increased retention of high Contributors	1. Turnover by contribution assessment	Work force data
	D. Increased turnover of low Contributors	1. Turnover by contribution assessment	Work force data
c. Contribution development	A. Better communication of contribution expectations	1. Feedback and coaching procedures used	Focus group
		2. Time spent on training by demographics	Project office data/training records
	B. Improved satisfaction and quality of workforce	1. Organizational commitment	Attitude survey
		2. Perceived workforce quality	Attitude survey
3. Classification			
a. Improved classification system in an automated mode	A. Reduction in amount of time and paperwork spent on classification	1. Time spent on classification procedures	Personnel office data
		2. Reduction of paperwork/number of personnel actions (classification/promotion)	Personnel office data
	B. Ease of use	1. Managers' perceptions of time savings, ease of use, improved ability to implement requests	Attitude survey
b. Classification authority delegated to managers	A. Increased supervisory authority/accountability	1. Perceived authority	Attitude survey
	B. Decreased conflict between management and personnel office staff	1. Number of classification disputes/appeals pre/post	Personnel office records
		2. Management satisfaction with service provided by personnel office	Attitude survey
	C. No negative impact on	1. Internal pay equity	Attitude survey

INTERVENTIONS	EXPECTED EFFECTS	MEASURES	DATA SOURCES
	internal pay equity		
4. RIF			
a. Modified RIF	A. Minimize loss of high contributing employees with needed skills	1. Separated employees by demographics, contribution	Workforce data Attitude survey/focus groups
		2. Satisfaction with RIF process	Attitude survey/focus groups
	B. Contain cost and disruption	1. Cost comparisons of traditional vs. modified RIF	Personnel/budget office data
		2. Time to conduct RIF	Personnel office data
		3. Number of appeals/ reinstatements	Personnel office data
5. Development Opportunities Program			
a. Developmental Opportunities	A. Expanded range of professional growth and development	1. Number and type of opportunities taken	Workforce data
6. Hiring			
a. Streamlined examining process	A. Improved hiring timeliness	1. Managers' perceptions of time savings, ease of use, improved ability to hire	Attitude survey
		2. Time spent on hiring process	Personnel office data
b. Distinguished Scholastic Achievement Appointment	A. Improved hiring timeliness	1. Managers' perceptions of time savings, ease of use, improved ability to hire	Attitude survey
		2. Time spent on hiring process	Personnel office data
7. Combination of All Interventions			
a. All	A. Improved organizational effectiveness	1. Combination of personnel measures	All data sources
	B. Improved management of R&D workforce	1. Employee/management satisfaction	Attitude survey

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VIII. Demonstration Project Costs

The goal of this Demonstration Project is a system in which payroll costs and resource utilization can be controlled consistent with the organization's fiscal strategies. This Demonstration Project consists of a system of pay incentives and processes that are flexible and can operate in harmony with the operational and financial needs of the larger organization. The costs of the Project are borne by AFRL. Costs associated with the Demonstration Project include DCPDS and software automation, training, WGI buy-in, buy-up to minimum for band, and Project evaluation. The timing of the expenditures depends on the implementation schedule. Because automation requirements will be minimized as a result of existing software system similarities, costs are estimated to be below $100K.

IX. Required Waivers to Law and Regulation

The following waivers and adaptations of certain 5 U.S.C. and 5 CFR provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, U.S.C.

Chapter 31, section 3111: Acceptance of Volunteer Service. (This section is waived to allow for a Voluntary Emeritus Corps.)

Chapter 33, section 3308: Competitive Service; Examinations; Educational Requirements Prohibited. (This section is waived with respect to the scholastic achievement appointment authority.)

Chapter 33, sections 3317(a) and 3318(a): Competitive Service; Related to certification and selection from registers. (These sections are waived to eliminate the "rule of three.")

Chapter 33, section 3319: Alternative Ranking and Selection Procedures. (This section is waived to eliminate quality categories.)

Chapter 33, section 3321: Competitive Service; Probationary Period. (This section waived only to the extent necessary to replace "grade" with "broadband level.")

Chapter 33, section 3341: Details; Within Executive or Military Departments. (This section is adapted to the extent necessary to waive the time limits for details.)

Chapter 35, section 3502: Order of Retention. (This section waived to the extent necessary to allow provisions of the RIF plan as described in this **Federal Register** notice.)

Chapter 43, sections 4301–4305: Related to performance appraisal. (These sections are waived to the extent necessary to allow provisions of the contribution-based compensation system as described in this **Federal Register** notice.)

Chapter 51, sections 5101–5102(a)(5), 5103, and sections 5104–5112: Related to classification standards and grading. (These sections are waived to the extent necessary to allow classification provisions described in this **Federal Register** notice.)

Chapter 53, sections 5301–5307 and: Related to pay comparability system and General Schedule pay rates. (This waiver applies to the extent necessary to allow: (1) Demonstration Project employees to be treated as GS employees and (2) basic rates of pay under the Demonstration Project to be treated as scheduled rates of basic pay.

Chapter 53, sections 5331–5336: These waivers apply to the extent necessary to allow: (1) Demonstration

Project employees to be treated as GS employees; (2) to allow the provisions of this **Federal Register** notice pertaining to setting rates of pay; and (3) waive sections 5335 and 5336 in their entirety.

Chapter 53, sections 5361–5366: Grade and Pay Retention. (These sections waived to the extent necessary to: (1) Replace "grade" with "broadband;" (2) allow Demonstration Project employees to be treated as GS employees; and (3) sections 5362–5366 are waived in their entirety to allow provisions of this **Federal Register** notice pertaining to grade and pay retention.)

Chapter 55, sections 5545 and 5547: Related to premium pay. (These sections waived to the extent necessary to allow Demonstration Project employees to be treated as GS employees.)

Chapter 57, sections 5753–5755: Related to recruitment, relocation, retention payments, and supervisory differential. (These sections waived to the extent necessary to allow: (1) Employees and positions under the Demonstration Project to be treated as employees and positions under the GS and (2) that management may offer a bonus to incentivize geographic mobility to a SCEP student.)

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), (a)(1)(B), and (a)(1)(C)(ii): Related to removal, suspension, and reduction in grade or pay. (These sections are waived to the extent that they refer to one or two years of continuous service to allow up to a three-year probationary period for S&Es.)

Chapter 75, section 7512(3): Related to adverse action. (This section waived to the extent necessary to: (1) Replace "grade" with "broadband level;" and (2) exclude reductions in broadband level not accompanied by a reduction in pay.)

Chapter 75, section 7512(4): Related to adverse action. (This section is waived to the extent necessary to provide that adverse action provisions do not apply to conversions from GS special rates to Demonstration Project pay, as long as total pay is not reduced.)

B. Waivers to Title 5, CFR

Part 300, sections 300.601–300.605: Time-in-Grade Restrictions. (Time-in-grade restrictions are eliminated in this demonstration project.)

Part 308, sections 308.101–308.103: Volunteer Service. (Amended to allow for a Voluntary Emeritus Corps.)

Part 315, sections 315.801(a); (b)(1); (c) and (e); and sections 315.802(a) and (b)(1): Related to probationary period. (Amended to allow for extended probationary or trial period of 3 years for all newly hired S&E employees.)

Part 315, section 315.901 and 315.907: Probation on Initial Appointment to a Supervisory or Managerial Position. (This section waived only to the extent necessary to replace "grade" with "broadband level.")

Part 316, sections 316.301, 316.303, and 316.304: Term Employment. (These sections are waived to allow modified term appointments as described in this **Federal Register** notice.)

Part 332, sections 332.401 and 332.404: Order on Registers and Order of Selection from Certificates. (These sections are waived to the extent necessary to allow: (1) No rating and ranking when there are 15 or fewer qualified applicants and no preference eligibles; (2) the hiring and appointment authorities as described in this **Federal Register** notice; and (3) elimination of the "rule of three.")

Part 335, section 335.103(c): Agency Promotion Programs. (This section is waived to the extent necessary to: (1) Allow non-competitive temporary job changes as described in this **Federal Register** notice and (2) expand discretionary exemptions to agency promotion programs.)

Part 337, section 337.101(a): Rating Applicants. (This section is waived when there are 15 or fewer qualified applicants and no preference eligibles.)

Part 340, subpart A, subpart B, and subpart C: Other than Full-Time Career Employment. (These subparts are waived to the extent necessary to allow a Voluntary Emeritus Corps.)

Part 351, Reduction in Force. (This part is waived to the extent necessary to allow provisions of the RIF plan as described in this **Federal Register** notice. In accordance with this FRN, AFRL will define the competitive area, retention standing, and displacement limitations.) Specific waivers include: Sections 351.402–351.404: Scope of Competition; sections 351.501–351.504: Retention Standing; sections 351.601–351.608: Release from Competitive Level; and section 351.701: Assignment Involving Displacement.

Part 430, subpart A and subpart B: Performance Management; Performance Appraisal. (These subparts are waived to the extent necessary to allow provisions of the contribution-based compensation system as described in this **Federal Register** notice.)

Part 432, sections 432.101–432.105: Regarding performance based reduction in grade and removal actions. (These sections are waived to the extent necessary to: (1) Replace "grade" with "broadband;" (2) exclude reductions in broadband level not accompanied by a reduction in pay; and (3) allow provisions of CCS and addressing inadequate contribution as described in this **Federal Register** notice.)

Part 511, subpart A, subpart B: Classification under the General Schedule. (These subparts are waived to the extent necessary to allow classification provisions outlined in this **Federal Register** notice.)

Part 511, sections 511.601–511.612: Classification Appeals. (These sections are waived to the extent necessary to: (1) Replace "grade" with "broadband;" (2) add to the list of issues that are neither appealable or reviewable, the assignment of series under the project plan to appropriate career paths; and (3) to allow informal appeals to be decided by the AFRL pay pool manager. Formal appeal rights are unchanged.)

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention. (This subpart is waived in its entirety.)

Part 531, subpart B: Determining Rate of Pay; subpart D: Within-Grade Increases; subpart E: Quality Step Increases. (These subparts are waived in their entirety to allow for the pay setting provisions as described in this **Federal Register** notice.)

Part 531, subpart F: Locality Payments. (This subpart is waived to the extent necessary to allow: (1) Demonstration Project employees to be treated as GS employees; (2) replace "grade" with "broadband;" and (3) to allow basic rates of pay under the Demonstration Project to be treated as scheduled rates of basic pay.)

Part 536, subpart A, subpart B, and subpart C: Grade and Pay Retention. (These subparts are waived in their entirety.)

Part 550, section 550.703: Severance Pay. (This section is waived to the extent to allow AFRL to define reasonable offer.)

Part 550, section 550.902: Hazard Pay. (Definition of "employee," is waived only to the extent necessary to allow Demonstration Project employees to be treated as GS employees.)

Part 575, sections 575.103(a), 575.203(a), 575.303(a), and subpart D: Recruitment and Relocation Bonuses; Retention Allowances; Supervisory Differentials. (These sections are adapted to the extent necessary to allow employees and positions under the Demonstration Project to be treated as employees and positions under the General Schedule. Subpart D is waived in its entirety; pay is based on employee contribution.)

Part 575, sections 575.201; 575.202; 575.205 (a); (b); 575.206(a)(1); (b); (c); 575.207(a)(3); and 575.208(a)(1)(i)(iv)(3): Relocation Incentives. (These sections waived to the extent necessary to allow:

(1) Relocation incentives to new SCEP students; (2) employees and positions under the Demonstration Project to be treated as employees and positions under the General Schedule; and (3) relocation incentives to SCEP students whose worksite is in a different geographic location than that of the college enrolled.)

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Nonforeign Areas. (This subpart is adapted to the extent necessary to allow employees and positions under the Demonstration Project to be treated as employees and positions under the General Schedule.)

Part 752, sections 752.101 and 752.301: Adverse Actions. (This section is waived to the extent that they refer to one or two years of continuous service to allow up to a three-year probationary period for S&Es.)

Part 752, section 752.401(a)(3): Reduction in Grade. (This section is waived to the extent necessary to replace "grade" with "broadband" and to exclude reductions in broadband level not accompanied by a reduction in pay.)

Part 752, section 752.401(a)(4): Reduction in Pay. (This section is waived to the extent necessary to provide that adverse action provisions do not apply to conversions from GS special rates to Demonstration Project pay, as long as total pay is not reduced.)

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APPENDIX A. OCCUPATIONAL SERIES INCLUDED IN THE AFRL PERSONNEL MANAGEMENT DEMONSTRATION PROJECT (AS OF JANUARY 2009)

Series	Occupation	Series	Occupation
Occupational Series within the Scientist and Engineer Career Path (DR pay plan)			
0101	Social Scientist	0855	Electronics Engineering
0180	Psychology	0858	Biomedical Engineering
0190	General Anthropology	0861	Aerospace Engineering
0199	Social Science Student	0892	Ceramic Engineering
0401	Trainee General Biological Science	0893	Chemical Engineering
0403	Microbiology	0896	Industrial Engineering
0405	Pharmacology	0899	Engineering & Architecture Student Trainee
0413	Physiology	1301	General Physical Science
0414	Entomology	1306	Health Physics
0415	Toxicology	1310	Physics
0601	General Health Science	1313	Geophysics
0662	Optometrist	1320	Chemistry
0665	Speech Pathology & Audiology	1321	Metallurgy
0701	Veterinary Medical Science	1330	Astronomy & Space Science
0801	General Engineering	1340	Meteorology
0803	Safety Engineering	1370	Cartography
0804	Fire Protection Engineering	1399	Physical Science Student Trainee
0806	Materials Engineering	1515	Operations Research
0808	Architecture	1520	Mathematics
0810	Civil Engineering	1529	Mathematical Statistician
0819	Environmental Engineering	1530	Statistician
0830	Mechanical Engineering	1550	Computer Science
0840	Nuclear Engineering	1599	Mathematics & Statistics Student Trainee
0850	Electrical Engineering		
0854	Computer Engineering		
Occupational Series within the Business Management and Professional Career Path (DO pay plan)			
0130	Foreign Affairs	1101	General Business & Industry
0131	International Relations	1102	Contracting Specialist
0132	Intelligence	1150	Industrial Specialist
0170	History	1152	Production Control
0201	Human Resources Management	1170	Realty Specialist
0301	Misc Administration & Program	1199	Business & Industry Student Trainee
0340	Program Management	1222	Patent Attorney
0341	Administrative Officer	1410	Librarian
0343	Management & Program Analyst	1412	Technical Information Services

0346	Logistics Management Specialist	1601	Equipment, Facilities, & Services
0391	Telecommunications Specialist	1640	Facility Operations Specialist
0399	Administrative/Office Support Student Trainee	1654	Printing Services
0501	Financial Administration & Program	1670	Equipment Specialist
0505	Financial Management	1712	Training Specialist
0510	Accountant	1730	Education Research
0560	Budget Analyst	1740	Education Services Specialist
0599	Financial Mgmt Student Trainee	1750	Instructional Systems
0644	Medical Technologist	1910	Quality Assurance
0690	Health System Specialist	2001	General Supply
0671	Industrial Hygiene	2003	Supply Program Management
0905	General Attorney	2010	Inventory Management
0950	Paralegal Specialist	2130	Traffic Management
1020	Illustrator	2210	Information Technology Mgmt
1035	Public Affairs Specialist	2299	Information Technology Student Trainee
Occupational Series within the Technician Career Path (DX pay plan)			
0181	Psychology Aid & Technician	0698	Environmental Health Technician
0404	Biological Science Technician	0802	Engineering Technician
0642	Nuclear Medicine Technician	0809	Construction Control Technical
0645	Medical Technician	0856	Electronics Technical
0647	Diagnostic Radiologic Technologist	1311	Physical Science Technician
0649	Medical Instrument Technician	1521	Mathematics Technician
Occupational Series within the Mission Support Career Path (DU pay plan)			
0083	Police	0899	Engineering & Architecture Student Trainee
0085	Security Guard	0963	Legal Instruments Examining
0086	Security Clerical & Assistant	0986	Legal Assistant
0099	Security Student Trainee	1101	General Business & Industry
0199	Social Science Student Trainee	1105	Purchasing Agent
0303	Miscellaneous Clerk & Assistant	1106	Procurement Clerk & Technician
0305	Mail & File Clerk	1152	Production Control
0318	Secretary	1199	Business & Industry Student Trainee
0326	Office Automation Clerical	1399	Physical Science Student Trainee
0335	Computer Clerk & Assistant	1411	Library Technician
0344	Management & Program Clerical & Assistance	1599	Mathematics & Statistics Student Trainee
0399	Administrative/Office Support Student Trainee	1603	Equipment, Facilities, & Services Assistant
0503	Financial Clerk & Technician	1702	Education & Training Technician
0525	Accounting Technician	2001	General Supply

0540	Voucher Examiner	2005	Supply Clerical & Technician
0561	Budget Clerk & Assistant	2102	Transportation Clerk & Asst
0599	Financial Management Student Trainee	2131	Freight Rate Assistant
0650	Medical Technical Assistant	2299	Information Technology Student Trainee
0675	Medical Records Technician		
0679	Medical Clerk		
0681	Dental Assistant		

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Appendix B: Descriptors Sorted by Career Path, Broadband Level, and Factor Scientists and Engineers Career Path (DR)

Level I Descriptors

Problem Solving Factor: Applies knowledge of science, technology, or processes to assigned tasks. Efforts are within the technology area or own organization. Analyzes and resolves routine to moderately-difficult problems within assigned area, often under the guidance of senior personnel. Develops limited variations to established methods and/or techniques. Uses judgment in selecting, interpreting, and adapting known scientific principles. Considers existing approaches and researches novel alternatives. Efficiently provides solutions that resolve assigned problems with some oversight/assistance from senior personnel. Completed work is reviewed for soundness, appropriateness, and conformity. Capability is recognized within own organization.

Communication Factor: Prepares information to use within own organization and technical area. Exchanges information with other functional areas or external contacts. Documents routine information in a clear and timely manner. Effectively utilizes communications tools to contribute to reports, documents, presentations, etc. Presents routine information in a clear and timely manner. Actively listens and responds appropriately. Develops speaking skills for basic briefings and effectively adjusts to the audience with guidance. Provides reports, documents, and presentations to senior personnel for review. Makes necessary revisions per guidance from senior personnel.

Technology Management Factor: Interacts within technical area on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of technical goals within own organization. Participates in technology area planning within own organization. Contributes technical ideas to proposal preparation and new technology development. Efficiently performs tasks utilizing available resources, including one's own time, to successfully accomplish assigned work. Provides inputs to risk management and process improvements. Contributes within own organization to the development and transition of technology solutions. Seeks out and uses relevant outside technologies to support own technical and functional activities.

Teamwork and Leadership Factor: Performs work within a team that improves capability of a technology area or organization. Coordinates actions and gains understanding of other areas sufficiently to make appropriate recommendations. As team member, makes positive contributions in assigned areas to meet team goals. Shares relevant knowledge and information with others. Develops positive working relationships with peers and superiors alike. Maintains currency in area of expertise. Actively seeks guidance/opportunities to improve/expand skills. Receives close guidance from others. Performs duties in a professional, responsive, and cooperative manner in accordance with established policies and procedures.

Level II Descriptors

Problem Solving Factor: Develops or modifies new methods, approaches, or scientific knowledge to solve challenges. Efforts involve multiple technology areas or organizations. Applies knowledge of science/technology to analyze and resolve multifaceted issues/problems with minimal guidance. Develops comprehensive modifications to established methods and/or techniques. Uses judgment and originality in developing innovative approaches to define and resolve highly complex situations. Approaches to solving problems require initiative and resourcefulness in interpreting and applying scientific principles that are applicable but may be conflicting or not clearly understood. Consults appropriately to develop objectives, priorities, and deadlines. Plans and carries out work that is well aligned with organizational goals. Completed work is generally accepted upon review. Expertise is recognized internally and externally by academia, industry, or government peers.

Communication Factor: Provides information to peers, senior technical leaders, and/or managers within and beyond own organization to influence decisions or recommend solutions. Exchanges information with established internal/external networks. Documents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Authors reports, documents, and presentations pertaining to area(s) of expertise. Presents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Actively listens to others' questions, ideas, and concerns and considers diverse viewpoints. Demonstrates effective speaking skills for advanced briefings, tailoring presentations to facilitate understanding. Reviews own communication products prior to submittal to peers, senior technical leaders, managers, and/or external contacts, resulting in minimal revision. May assist with the communications of others.

Technology Management Factor: Collaborates with technical area stakeholders to develop strategies for effective execution within a particular technology area. Executes activities within and beyond own organization that ensure the technology mission. Recognizes opportunities and formulates plans within own organization. Generates key ideas and contributes technically to proposal preparation and marketing to establish new business opportunities. Identifies and advocates for resources necessary to support and contribute to mission requirements. Demonstrates knowledge of corporate processes by effective application of resources. Actively manages cost, schedule, and resource risks seeking timely remedies. Engages others in using resources more efficiently and suggests innovative ideas to optimize available resources. Implements the development and transition/transfer of technology

solutions, within or beyond own organization, based upon awareness of customer requirements. Evaluates and incorporates appropriate outside technology to support research and development.

Teamwork and Leadership Factor: Performs work as a key team member or leads others to improve capability of a technology area or organization. Integrates efforts or works across disciplines. Provides consultation on complex issues. As lead or key team member, makes significant contributions to meet team goals in support of the organizational goals. Works collaboratively with others in a dynamic environment, demonstrating respect for other people and alternative viewpoints. Recognizes when others need assistance and provides support. Assists in the development and training of internal/external team members. Works to develop/improve self in order to more effectively accomplish team goals. May recommend selection of team members. Receives general guidance in terms of established policies, objectives, and decisions from others. Discusses novel concepts and significant departures from previous practices with supervisor or team leader.

Level III Descriptors

Problem Solving Factor: Performs duties across a broad range of activities that require substantial depth of analysis and expertise. Implements or recommends decisions which impact science or technology. Applies and expands knowledge of science/technology to resolve critical, multifaceted problems and/or develops new theories or methods. Adapts to tasks involving changes or competing requirements. Uses judgment and ingenuity in making decisions/developing technologies for areas with substantial uncertainty in methodology, interpretation, and/or evaluation. Approaches to solving problems require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, scientific knowledge, or organizational principles. Actively engages organizational planning activities. Defines and leads work efforts that are focused on organizational priorities. Results of work are considered authoritative. Expertise is recognized at the national level across the Laboratory, service, DoD agencies, industry, and/or academia.

Communication Factor: Communicates complex technical, programmatic, and/or management information across multiple organizational levels to drive decisions by senior leaders. Collaborates with broad functional and technical areas. Leads documentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Authors and enables authoritative reports, documents, and presentations pertaining to multiple areas of expertise. Leads presentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Seeks opinions and ideas from others and carefully considers and incorporates diverse viewpoints. Demonstrates expert speaking skills and adaptability for critical briefings. Produces required forms of communication with minimal guidance from others. Reviews communications of others for appropriate and accurate content.

Technology Management Factor: Leads technology partners in highly complex technical areas to develop strategies for research and development programs. Leads development and execution at a broad level in the Laboratory to advance the technology mission. Leads/contributes significantly to program definition and/or planning. Pursues near-term business opportunities by exploiting internal and/or external resources. Identifies and develops mission relevant solutions while leveraging collaborations across the Laboratory. Monitors evolution of cost, schedule, and resource risk. Anticipates changes in resource requirements and develops and advocates solutions in advance. Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources. Leads development and transition/transfer activities based upon extensive customer interactions and appropriate partnerships. Develops technology solutions by exploiting external technology to enhance research and development.

Teamwork and Leadership Factor: Leads critical aspects of team or technology area with focused accountability for quality and effectiveness. Integrates efforts across disciplines. Sought out for consultation on complex issues that affect internal/external organizations and/or relationships. Effectively seeks out and capitalizes on opportunities for collaboration to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams. Leads and supports the development and training of subordinates and/or internal/external team members. Actively seeks out mentoring opportunities. Proactively develops/improves self in order to more effectively accomplish organizational goals. Recommends selection and/or selects team members. Receives only broad policy/guidance. Provides guidance/direction to others. May participate in position and performance management.

Level IV Descriptors

Problem Solving Factor: Defines, leads, and manages an overall technology area which includes multidisciplinary science and technology (S&T) and/or non-S&T aspects. Makes critical decisions which significantly impact science or technology. Applies considerable judgment to resolve critical, multifaceted problems spanning multiple disciplines. Expertly accomplishes tasks or resolves issues involving significant uncertainties, changes, or competing requirements. Using broadly stated organizational goals fosters a culture which rewards ingenuity and generates/implements innovative ideas for developing new technologies. Develops innovative approaches which significantly expand the scientific knowledge base and/or the overall effectiveness of the organization. Sets objectives and plans, designs, and directs work to meet evolving organizational goals. Agency provides only broadly defined missions and functions. Leadership is recognized at the national/international level across various laboratories, services, DoD, industry and/or academia.

Communication Factor: Communicates with a wide range of peers/organizations across multiple levels inside and outside the Laboratory to influence major technical, programmatic, and/or management activities. Builds collaborative relationships across broad functional and technical areas and engages with leaders at the national and/or international level. Promotes a culture of excellence in synthesizing and documenting diverse and highly complex information, concepts, and ideas. Authors and directs authoritative reports, documents, and presentations integrating multiple disciplines. Develops strategies to improve presentations of diverse and highly complex information, concepts, and ideas. Fosters an atmosphere of respect for others at all levels and promotes expression of alternative viewpoints. Displays mastery of speaking skills and delivers compelling, authoritative briefings. Establishes guidance and

oversight requirements for communication in their organizational or technical area. Responsible and accountable for overall development of reports, documents, and presentations of self and others within area of responsibility.

Technology Management Factor: Integrates wide-ranging activities at a national/international level, involving multiple technical areas, to develop strategic technology solutions. Directs program/process formulation and implementation to achieve the mission goals at the Laboratory/multi-agency level. Leads requirements generation, strategic planning, and prioritization. Creates business opportunities based upon market awareness and exploitation of internal and/or external resources. Identifies, proposes, and develops diverse and timely mission relevant solutions while leveraging national/international collaborations. Manages and defends the resources needed to achieve organizational goals and expertly guides the implementation of these resources in a dynamic environment. Leads, promotes, and enables process improvements to maximize resource utilization. Leads world class research and development programs based upon anticipating customer requirements and leveraging national/international activities. Develops innovative solutions that exploit emerging technology and fosters an environment of technology exploitation.

Teamwork and Leadership Factor: Leads/manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization. Has broad and substantial impact on organizational decisions affecting internal/external organizations and/or relationships. Cultivates and sustains a professional environment of cooperation, cohesion, and teamwork. Formulates short- and long-term teaming/collaboration strategies across organizations/disciplines. Establishes team charters. Builds coalitions to establish integrated approaches that meet overall organizational mission requirements. Mentors and develops future organizational leaders and personnel through evaluations/feedback. Fosters a culture that encourages and rewards mentoring and development. Proactively develops/improves self in order to more effectively accomplish agency goals. Identifies and addresses skill deficiencies and selects team members. Works within the framework of agency policies, mission objectives, and time and funding limitations with minimal oversight. Establishes policy and/or provides guidance/direction to others. Responsible for position and performance management.

Business Management and Professional Career Path (DO)

Level I Descriptors

Problem Solving Factor: Applies knowledge of business management or a professional field to perform duties supporting and/or improving the efficiency and productivity of the organization. Analyzes and resolves difficult but routine problems within assigned area of responsibility, sometimes under the guidance of a senior specialist. Includes minor adaptation to established methods and techniques. Plans and carries out work based on established guidelines and supervisor's stated priorities and deadlines. Completed work is evaluated for soundness, appropriateness, and conformity to policy and requirements. Uses judgment in selecting, interpreting, and adapting guidelines that are readily available.

Communication Factor: Factual information and material is normally presented to individuals within immediate office or within own organization, but may involve external contacts. Communicates routine information in a clear and timely manner. Develops formal written communication often with supervisory review and revision. Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions. With guidance, effectively adjusts communications to the audience's level of understanding. Has speaking skills required to deliver basic briefings.

Business Management Factor: Interacts with customers on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of business goals of the organization. Provides timely, flexible, and responsive products and/or services to customers under guidance of senior specialist or supervisor. Contributes ideas for improvement of established services based on knowledge of a variety of business management or professional programs and systems and an understanding of customer needs. Demonstrates knowledge of available resources and the process for acquiring the resources needed to accomplish assigned work. Makes effective use of available resources including one's own time.

Teamwork and Leadership Factor: Makes positive contributions to all aspects of the overall team's responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities. Performs work that affects the accuracy, reliability, or acceptability of broader projects and programs. Coordinates joint actions and gains understanding of other areas sufficient to make appropriate recommendations. Works flexibly with others to accomplish team goals. Treats others fairly and professionally. Shares relevant knowledge and information with others. May participate as a member of cross-functional teams. May select or recommend selection of staff or team members.

Level II Descriptors

Problem Solving Factor: Develops new methods, criteria, policies, or precedents for business management or a professional field. Modifies or adapts established methods and approaches to complex issues that affect a wide range of organizational activities. May administer one or more complex programs within a functional area. Applies substantial knowledge of business management or a professional field to analyze and resolve highly complex issues and problems. Includes refinement of methods or development of new ones. Consults with supervisor to develop deadlines, priorities, and objectives. Plans and carries out work, effectively resolving most conflicts that arise. Keeps supervisor informed of potentially controversial issues. Completed work is reviewed primarily for meeting requirements and producing expected results. Uses initiative and resourcefulness in interpreting and applying policies, precedents, and guidelines that are applicable but may be conflicting or stated only in general terms. Uses considerable judgment and originality in developing innovative approaches to define and resolve highly complex situations.

Communication Factor: Communicates important concepts to influence decisions or recommend solutions with specialists and management officials in own organization. Occasionally communicates with individuals at higher levels and in other organizations. Communicates moderately complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints

and appropriately responds to questions or requests. Effectively adjusts communications to facilitate understanding. Tailors presentations and briefings to meet an audience's needs and level of understanding.

Business Management Factor: Works with customers to define/anticipate problems and develop strategies for effective resolution within a particular program area. Supports execution of activities that advance the business-related goals of the organization. Develops innovative or useful suggestions for designing and adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs. Contributes key ideas and/or strategies to develop, implement, and promote new/improved programs or services applicable to business management or a professional field. Identifies and advocates for resources necessary to support and contribute to mission requirements. Maximizes use of available resources.

Teamwork and Leadership Factor: Contributes as lead or key member of the team performing the substantive analytical or professional duties in support of the organizational mission. Effectively carries out integrated advisory and program work. Leads/mentors/provides oversight to specialists at same or lower level. Regularly consulted by management officials on complex issues due to depth and breadth of expertise. Works collaboratively and flexibly with others to accomplish team goals. Treats others fairly and professionally. Shares relevant knowledge and information with others. Recognizes when others need assistance and provides support. May participate as a member of cross-functional/integrated teams. Selects or recommends selection of staff or team members. Supports development and training of subordinates. Participates in mentoring and position/performance management.

Level III Descriptors

Problem Solving Factor: Performs duties across a broad range of activities that require substantial depth of analysis and organizational problem solving skills. Implements or recommends decisions which significantly impact agency policies/programs. Resolves critical problems or develops new theories for work products or services which affect the work of other experts, the development of major aspects of business management programs or missions, or impacts a large number of people. Assignments involve continual program changes or conflicting requirements. Supervisor outlines general objectives. Independently plans and carries out the work. Complex issues are resolved without reference to supervisor except for matters of a policy nature. Results are considered technically authoritative and are normally accepted without significant change. Uses judgment and ingenuity in making decisions in major areas of uncertainty in methodology, interpretation and/or evaluation. Guidelines require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, criteria, or propose new policies.

Communication Factor: Influences consensus among management officials within AFRL, AF, and in other agencies and organizations to accept ideas and implement recommendations designed to improve effectiveness of major programs and policies. Communicates complex information, concepts, and ideas in an accurate, clear, concise, well-organized, and timely manner. Written communication typically accepted without revision. Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses tone that respects and carefully considers diverse viewpoints, responding appropriately. Clearly communicates complex information, concepts, and ideas through briefings and presentations to a wide range of audiences.

Business Management Factor: Works jointly with customers to identify highly complex, sensitive, or controversial problems and develop strategies for effective resolution. Contributes to refinement of the business-related goals of the organization. Establishes successful working relationships with customers to address and resolve highly complex and/or controversial issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction. Develops effective plans and strategies for highly complex programs or services involving broad business management or a professional field. Successfully carries out and maintains such programs/services at a high level of customer awareness and satisfaction. Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.

Teamwork and Leadership Factor: Effectively seeks out and capitalizes on opportunities for the work unit to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles. Guides the critical aspects of programmatic and business management efforts of individuals and/or teams with focus on accountability, quality, and effectiveness. Has impact on business recommendations that affect both internal and external relationships. Leads and provides oversight to effectively manage integrated advisory and program services. Regularly consulted by management officials on highly complex issues. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams. Selects or recommends selection of staff, team members, and/or subordinate supervisors. Initiates development and training of subordinates. Participates in mentoring, motivation, coaching, instruction, and position/performance management.

Level IV Descriptors

Problem Solving Factor: Defines, leads, and manages an overall business management or professional program area which includes a full range of complex functional areas. Makes critical decisions which significantly change, interpret, or develop important agency policies/programs. Applies considerable judgment and ingenuity to interpret existing guidelines and develop policies and procedures for broadly based projects/programs. Independently plans, designs, and carries out programs, projects, studies, etc., such that overall program objectives are met. Supervisor provides only broadly defined missions and functions. Results of work are considered technically authoritative and are almost always accepted without change. Guidelines are broadly stated and non-specific. Generates/implements innovative ideas for increasing overall effectiveness of the organization.

Communication Factor: Interacts with high-ranking officials to include AF level and other agencies and departments to influence major program policies and/or defend controversial decisions. May also communicate with leaders at the local, state, and/or national levels for similar purposes. Tailors style to communicate critical information effectively to diverse audiences at different levels. Accurately communicates complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision. Receptive to alternative viewpoints. Clearly communicates complex information and

ideas to a range of audiences. Shows respect for others and responds appropriately to people at all levels. Delivers compelling policy level briefings.

Business Management Factor: Interacts at senior management levels to negotiate and resolve conflicts concerning activity-wide policies and programs. Resolutions are communicated across the organization/agency. Contributes to the definition and improvement of processes that affect the business goals of the organization. Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Develops innovative and useful approaches for improving or expanding products and/or services, resulting in highly valued services that improve overall customer satisfaction. Generates strategic plans and objectives to develop, implement, and promote broadly-based programs and services to meet organizational needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services. Identifies, acquires, defends, and manages the resources needed to achieve organizational goals.

Teamwork and Leadership Factor: Formulates short- and long-term strategies across subordinate units to achieve significant results in support of the organization's goals and long-term vision. Leads and manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization. Builds coalitions to establish integrated approaches to meet overall organizational mission requirements. Sets and maintains a tone of cooperation, cohesion, and teamwork. Champions respect and value for others. Selects or recommends selection of staff, team members, and subordinate supervisors. Initiates development and training of subordinates. Directs or recommends mentoring and position/performance management. Develops future team leaders and supervisors.

Technician Career Path (DX)

Level I Descriptors

Problem Solving Factor: Applies basic knowledge to perform well-defined work activities with guidance. Performs specific procedures which are typically a segment of a project of broader scope. Work products affect the accuracy, reliability, or acceptability of further procedures, processes, or services. Performs duties that involve related and established steps, processes, or methods. Operates and adjusts varied equipment and instrumentation to perform standardized tests or operations involved in testing, data analysis, and presentation. Executes routine assignments without explicit instructions if standard work methods can be used. Resolves recurring routine problems with little supervision. Uses judgment in locating and selecting the most appropriate procedures, making minor deviations to adapt the guidelines to specific cases.

Communication Factor: Acquires or exchanges information with individuals on same team or within own organization for routine and recurring issues. May involve limited external contacts. Communicates routine information in a clear and timely manner. Written communication may require some revision. Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions. With guidance, effectively adjusts communications to facilitate understanding.

Business Management Factor: Interacts with customers to communicate information and coordinate routine actions within area of assigned responsibility. Conducts duties in support of business goals of the organization. Provides timely, flexible, and responsive products and/or services to customers under guidance of senior technician or supervisor. Contributes ideas for improvement of products and services to project lead/supervisor based on an understanding of customer needs. Efficiently utilizes available resources, including one's own time, to successfully accomplish assigned work.

Teamwork and Leadership Factor: Makes positive contributions to specific aspects of the team's responsibilities. Actively takes initiative to expand knowledge and assume more responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities. Provides work product that is a complete project of relatively conventional and limited scope or a portion of a larger project. Work requires a limited degree of coordination and integration of diverse phases carried out by others. Personal interactions foster cooperation and teamwork. Works effectively with others to accomplish tasks. Treats others respectfully and professionally. Provides information and assistance to others as needed. Attempts to handle minor work-related disagreements in a positive manner.

Level II Descriptors

Problem Solving Factor: Plans and conducts work which is a complete project of relatively limited scope or a portion of a large and more diverse project. Work affects the operation of systems, equipment, testing operations, research conclusions, or similar activities. Applies practical knowledge of different but established technical methods, principles, and practices within a narrow area to design, plan, and carry out projects. Assignments require study, analysis, and consideration and selection of several possible courses of action. Supervisor outlines overall requirements, providing general instructions regarding objectives, time limitations, and priorities. Plans and carries out successive steps and handles problems in accordance with accepted practices or instructions. Completed work is evaluated for technical soundness, appropriateness, and conformity. Applies knowledge and experience to a broad range of assignments. Seeks novel solutions where appropriate. Adapts previous plans/techniques to fit new situations.

Communication Factor: Communicates with co-workers and management officials in own organization in order to plan and coordinate work, communicate important technical concepts and requirements, or recommend solutions. Also, communicates with various individuals at higher levels and in other organizations. Communicates information in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints. Tailors communications to ensure an effective level of understanding. Clearly responds to questions or requests, following up when appropriate.

Business Management Factor: Works with customers to define/anticipate problems and develop strategies for effective resolution within technical areas. Supports execution of activities that advance the business-related goals of the organization. Develops innovative or useful suggestions for designing and adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs. Contributes key ideas and/or strategies to develop, implement, and apply new/improved methods and procedures applicable to technical areas. Anticipates, identifies, and advocates for resources necessary to support and

contribute to mission requirements. Maximizes use of available resources.

Teamwork and Leadership Factor: Makes positive contributions to multiple aspects of the team's responsibilities. Shares knowledge and experience with team members. Provides a work product that is a complete conventional project, or a portion of a larger, more diverse project. Projects require coordination of several independent parts, each requiring independent analysis and solution. Works collaboratively and flexibly with others to accomplish team goals. Treats others respectfully and professionally. Shares relevant knowledge and information with others. Effectively contributes as a participating member on other teams. Supports development and training of subordinates and/or co-workers. Participates in mentoring and position/performance management.

Level III Descriptors

Problem Solving Factor: Establishes criteria, formulates projects, assesses program effectiveness, and investigates a variety of unusual conditions or problems in areas which affect a wide range of major activities. Identifies areas for investigation or improvement. Work affects the design of systems, equipment, testing operations, research conclusions, or similar activities. Applies considerable knowledge of a wide range of technical methods, principles, and practices to design, plan, and carry out complex projects. Assignments are frequently complicated by many operations which equipment or systems must perform, and many variables that must be considered. Precedents are sometimes absent or obscure. Handles conflicting issues. Supervisor outlines general requirements and objectives. Analyzes problems and develops approaches/work plans. Requires little to no technical advice or guidance. Technical decisions and recommendations are normally accepted by higher authority. Applies extensive knowledge to unusual or highly difficult assignments. Reviews, analyzes, and integrates work performed by others along with adaptations from changes in technology as they relate to the possible impact on projects, systems, or processes.

Communication Factor: Communicates with employees and management officials both within own organization and in organizations outside the agency to resolve problems, accept ideas, and implement recommendations designed to improve effectiveness of operating systems, programs, equipment, or services. Communicates complex information in a clear, concise, well-organized, and timely manner. Written communication is typically accepted without revision. Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints, responding appropriately. Communicates complex information, concepts, and ideas through briefings or presentations to audiences in a manner that facilitates understanding. Clearly responds to questions or requests with follow up when appropriate.

Business Management Factor: Works with customers to identify highly complex or controversial problems and develop strategies for effective resolution. Contributes to refinement of the business-related goals of the organization. Establishes successful working relationships with customers to address and resolve highly complex and/or controversial issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction. Develops effective plans and strategies for highly complex products or services involving a broad technical area. Successfully carries out and maintains services at a high level of customer awareness and satisfaction. Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.

Teamwork and Leadership Factor: Is sought out for consultation and serves as a mentor to other team members. Seeks out opportunities to share experience and lessons learned with other team members, both internal and external to own organization. Manages highly difficult assignments in functional areas. Acts as a spokesperson authorizing important modifications which conform to broad policy. Coordinates assignments with subject matter experts in other areas. Reviews, analyzes, and integrates work performed by other groups or individuals outside the organization. Builds effective partnerships across units. Volunteers and actively serves in leadership roles on integrated teams. Regularly consulted by others on significant issues. Deals with challenging conflicts in a manner that motivates and encourages cooperation. Develops options to resolve disagreements that may require resolution at a higher level. Provides recommendations for creation of teams. Develops and identifies new training needs for the professional growth of team members. Provides mentoring and position/performance management.

Level IV Descriptors

Problem Solving Factor: Provides expert advisory services and leadership for broad and complex programs, systems, and processes that advance the state of the art. Plans, organizes, and/or directs extensive development efforts associated with the latest advancements in technology. Projects are multi-disciplinary and are greatly affected by advances in technology. Projects are also characterized by highly complex problems for which precedents are lacking. Uses judgment and ingenuity to convert objectives into programs or policies. Adjusts broad activities to align with changing program needs. Supervisor outlines only broad policy and operational objectives/requirements. Technical supervision is limited to reviewing broad hypotheses and overall approach. Interpretations are generally accepted as technically authoritative. Creates new techniques, establishing criteria and/or developing new information. Approach is not easily determined and novel approaches or considerable modification of existing techniques is required. May contribute to or publish technical papers on modification of existing theories or technology.

Communication Factor: Interacts with individuals or groups in various agencies and departments to influence and/or defend controversial decisions. Tailors style to communicate critical information effectively to diverse audiences at different levels. Communicates complex information in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision. Prepares and delivers briefings to communicate complex information and ideas to a range of audiences in a manner that facilitates understanding. Receptive to alternative or dissenting viewpoints. Shows respect for others and responds appropriately to people at all levels.

Business Management Factor: Interacts at senior management levels to negotiate and resolve conflicts affecting a wide-range of activities. Contributes to the definition and improvement of processes that affect the business goals of the organization. Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Develops innovative and useful approaches for evaluating and improving operations, equipment, and/or activities resulting in highly valued services that improve overall customer satisfaction. Stays appraised of current

technologies and methods to develop techniques for new or modified work methods, approaches, or procedure for substantive functions and services to meet organizational and customer needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services. Plans and allocates resources to accomplish multiple customer needs simultaneously across the organization. Develops and implements innovative approaches to attain goals and minimize resource expenditures.

Teamwork and Leadership Factor: Recognized as a prominent contributor to key technical fields as a leader of a productive team directly contributing to the organization's mission. Considered a leader in the conception and formulation of innovative concepts and ideas. Serves as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with significant technical issues. Responsible for ensuring team composition is sufficient to meet program objectives. Contributes to achieving organizational goals by building flexible and effective partnerships. Successfully resolves sensitive conflicts. Actively works to ensure the continuous transfer of knowledge and skills throughout the work unit by serving as a technical resource and initiating or overseeing the development of formal knowledge sharing systems. Selects or recommends selection of staff and/or team members. Develops and identifies new training needs for the professional growth of subordinates. Directs and provides mentoring and position/performance management. May formally supervise at team-level.

Mission Support Career Path (DU)

Level I Descriptors

Problem Solving Factor: Performs clerical/assistant/support work involving the application of a body of standardized rules, procedures, or operations to resolve a variety of standard, recurring requirements. Work affects the quality and timeliness of products or services within the immediate office. Applies standard rules, procedures, or operations to accomplish repetitive tasks and resolve routine matters. Carries out recurring and routine work following supervisor's direction regarding work to be done, priorities, and specific procedures/guidelines to be followed. Completed work is reviewed for accuracy, timeliness, and adherence to instructions. Uses judgment in selecting and applying guidelines which are readily available.

Communication Factor: Communicates with individuals primarily in own organization in order to exchange information and present findings. Communicates routine information in a clear and timely manner. Written communication may require some revision. Clearly communicates status of assigned tasks. Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions.

Business Management Factor: Interacts with customers on routine issues to communicate information and clarify instructions for tasking within area of assigned responsibility. Conducts administrative duties in support of business goals of the organization. Provides timely, flexible, and responsive products and/or services to customers under guidance of senior team member or supervisor. Suggests ideas for improvement of products and services based on an understanding of customer needs. Efficiently utilizes available resources to successfully accomplish assigned work. Appropriately prioritizes work; manages own time.

Teamwork and Leadership Factor: Contributes to specific aspects of the team's responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities. Provides work product or service of limited scope that requires a minimal degree of coordination and integration of work carried out by others. Personal attitude/conduct fosters cooperation and teamwork needed to accomplish tasks. Treats others fairly and professionally. Provides information and assistance to others as requested/needed. Attempts to handle minor work-related disagreements in a positive manner.

Level II Descriptors

Problem Solving Factor: Applies well-developed knowledge and skills to effectively perform a full range of moderately complex clerical/assistant/support work. Work affects the quality and timeliness of products or services within the organization. Applies standard rules, procedures, or operations to accomplish a variety of tasks and resolve moderately complex matters. Supervisor defines objectives, priorities, and deadlines. Independently plans and carries out steps required to complete assignments. Resolves recurring problems/deviations without assistance. Completed work is reviewed for accuracy, timeliness, and compliance with established methods/procedures/guidelines. Takes initiative to identify, locate, and appropriately apply guidelines and procedures.

Communication Factor: Communicates with co-workers and management officials in own organization in order to plan and coordinate work, communicate important concepts and requirements, or recommend solutions. Also, communicates with counterparts at various levels both inside and outside the organization. Communicates information in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision. Actively listens and appropriately responds to questions and concerns from others. Shows respect for others' ideas, comments, and questions. With guidance, effectively adjusts communications to facilitate understanding.

Business Management Factor: Effectively interacts with customers to understand their needs, answer questions, and provide routine information about products and/or services. Supports execution of activities that advance the business-related goals of the organization. Takes initiative to develop innovative ideas for adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs. Develops effective plans and strategies for improving the effectiveness of important products or services for an identified mission support area. Successfully provides services with a high level of customer satisfaction. Identifies and advocates for resources necessary to support and contribute to mission requirements.

Teamwork and Leadership Factor: Contributes as a member of the team performing substantive clerical/assistant/support duties in support of the organizational mission. Assists in the development and training of individuals or team members. Participates in mentoring and assists with team management. Effectively carries out important mission support work. Leads/mentors/provides oversight to employees at same or lower level. Regularly assists specialists/managers on support issues due to depth of knowledge and breadth of expertise. Works flexibly with others to accomplish team goals. Treats others fairly and professionally. Seeks opportunities to share relevant knowledge and information with others. May participate as a member on other teams.

Level III Descriptors

Problem Solving Factor: Performs clerical/assistant/support work involving application of an extensive body of rules, procedures, and operations to resolve a wide variety of complex organizational support activities. Work may occasionally have influence beyond immediate organization. Work has a direct impact on the effectiveness and efficiency of the work products and services of specialists within the organization. Applies considerable knowledge of the rules, procedures, and operations to accomplish a variety of tasks within the assigned area of responsibility. Applies guidelines and techniques to resolve complex problems involving related, procedural processes. Supervisor defines overall objectives, priorities, and deadlines. Works independently, resolving difficult problems that may arise. Completed work is reviewed for accuracy and compliance with established methods/procedures. Selects, interprets, and applies guidelines which are available but not completely applicable or have gaps in specificity. Uses considerable judgment by applying modified or new guidelines to resolve unique problems. May assist in the development of new guidelines for administrative procedures.

Communication Factor: Routine contacts are with co-workers, managers in organizations for which services are performed, and staff at higher echelons to coordinate work, communicate important concepts and requirements, or recommend solutions. May also interact with individuals in other agencies, departments, or public office. Communicates moderately complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication typically accepted without revision. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints and clearly responds to questions or requests, following up to ensure understanding. Tailors communications to ensure an effective level of understanding.

Business Management Factor: Serves as a central point of contact to provide authoritative explanations of requirements, regulations, and procedures, and to effectively resolve problems or disagreements affecting assigned areas. Contributes to refinement of the business-related goals of the organization. Establishes successful working relationships with customers to address and resolve complex and/or controversial mission support issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction. Develops and implements effective plans and strategies for improving important products or services involving a broad mission support area. Successfully provides services with a high level of customer awareness and satisfaction. Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.

Teamwork and Leadership Factor: Effectively seeks out and capitalizes on opportunities to assist specialists/managers in achieving significant results that support organizational goals. Is sought out for consultation. Accomplishes and/or guides the critical aspects of mission support efforts with focus on accountability, quality, and effectiveness. Assists in development of guidelines and processes that affect mission performance. Leads and/or provides oversight for integrated mission support services. Regularly consulted by others on significant issues. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams. May recommend selection of staff or team members. Initiates development and training of subordinates. Participates in mentoring and position/performance management. Develops others through mentoring, coaching, and instruction.

Level IV Descriptors

Problem Solving Factor: Applies expert-level knowledge and skills to effectively perform a wide-range of highly complex organizational support activities. Work often has influence beyond immediate organization. Work has a direct and significant impact on the effectiveness and efficiency of the work products and services of specialists and management officials within the organization. Typically leads other mission support personnel in defining and carrying out overall organizational support objectives. Develops guidelines, techniques, procedures, and/or operations for the most complex and difficult problems within the subject matter area for the organization. Operates with a great deal of independence. Plans and carries out assignments such that overall program objectives are met. Recommendations are generally accepted as technically authoritative. Work is evaluated only for conformance with broad objectives and is almost always accepted without change. Applies considerable judgment and ingenuity to interpret existing policies/procedures and develop new guidelines and techniques that have a direct impact on specific programs/services within the organization.

Communication Factor: Routine contacts are with co-workers, managers in organizations for which services are performed, and staff at higher echelons to coordinate work, communicate important concepts and requirements, or recommend solutions. May also interact with high-ranking individuals in other agencies, departments, or public office. Tailors style to communicate critical information effectively to diverse audiences at different levels. Communicates complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision. Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints, responding appropriately. Communicates complex information, concepts, and ideas through briefings or presentations to a range of audiences in a manner that facilitates understanding.

Business Management Factor: Interacts at senior management levels to negotiate and resolve conflicts affecting a wide-range of mission support activities. Assists in the definition and improvement of processes that affect the business goals of the organization. Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Establishes innovative and useful approaches for evaluating and improving mission support operations, processes, and/or activities resulting in highly valued services that improve overall customer satisfaction. Takes initiative to develop and implement techniques for new or modified methods, approaches, or procedures for substantive mission support functions and services to meet organizational and customer needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services. Identifies, acquires, defends, and manages the resources needed to accomplish duties directly supporting organizational goals. Balances competing resource requirements to ensure alignment with mission objectives.

Teamwork and Leadership Factor: Recognized as a significant contributor within a key mission support area by serving as a leader of a productive team

or a leader in the conception and formulation of relevant concepts and ideas. Serves as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with significant mission support issues. Contributes to achieving organizational goals by building flexible and effective partnerships. Manages the most sensitive conflicts in a positive manner. Actively works to foster collaboration by serving as a leadership resource. Selects or recommends selection of staff, team members, and subordinate supervisors. Formal supervisors in this broadband conduct performance evaluation/rating of subordinates. Initiates development and training of subordinates. Directs or recommends mentoring and position/performance management. Develops others through motivation, mentoring, coaching, and instruction.

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APPENDIX C. DESCRIPTORS SORTED BY CAREER PATH, FACTOR, AND BROADBAND LEVEL SCIENTISTS AND ENGINEERS CAREER PATH, PAY PLAN DR

KEY ELEMENTS	DR PROBLEM SOLVING FACTOR			
	DR I	DR II	DR III	DR IV
Scope/ Depth/ Breadth	Applies knowledge of science, technology, or processes to assigned tasks. Efforts are within the technology area or own organization.	Develops or modifies new methods, approaches, or scientific knowledge to solve challenges. Efforts involve multiple technology areas or organizations.	Performs duties across a broad range of activities that require substantial depth of analysis and expertise. Implements or recommends decisions which impact science or technology.	Defines, leads, and manages an overall technology area which includes multidisciplinary science and technology (S&T) and/or non-S&T aspects. Makes critical decisions which significantly impact science or technology.
Complexity	Analyzes and resolves routine to moderately-difficult problems within assigned area, often under the guidance of senior personnel. Develops limited variations to established methods and/or techniques.	Applies knowledge of science/technology to analyze and resolve multifaceted issues/problems with minimal guidance. Develops comprehensive modifications to established methods and/or techniques.	Applies and expands knowledge of science/technology to resolve critical, multifaceted problems and/or develops new theories or methods. Adapts to tasks involving changes or competing requirements.	Applies considerable judgment to resolve critical, multifaceted problems spanning multiple disciplines. Expertly accomplishes tasks or resolves issues involving significant uncertainties, changes, or competing requirements.
Creativity	Uses judgment in selecting, interpreting, and adapting known scientific principles. Considers existing approaches and researches novel alternatives.	Uses judgment and originality in developing innovative approaches to define and resolve highly complex situations. Approaches to solving problems require initiative and resourcefulness in interpreting and applying scientific principles that are applicable but may be conflicting or not clearly understood.	Uses judgment and ingenuity in making decisions/developing technologies for areas with substantial uncertainty in methodology, interpretation, and/or evaluation. Approaches to solving problems require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, scientific knowledge, or organizational principles.	Using broadly stated organizational goals, fosters a culture which rewards ingenuity and generates/implements innovative ideas for developing new technologies. Develops innovative approaches which significantly expand the scientific knowledge base and/or the overall effectiveness of the organization.
Relevance and Recognition	Efficiently provides solutions that resolve assigned problems with some oversight/assistance from senior personnel. Completed work is reviewed for soundness, appropriateness, and conformity. Capability is recognized within own organization.	Consults appropriately to develop objectives, priorities, and deadlines. Plans and carries out work that is well aligned with organizational goals. Completed work is generally accepted upon review. Expertise is recognized internally and externally by academia, industry, or government peers.	Actively engages organizational planning activities. Defines and leads work efforts that are focused on organizational priorities. Results of work are considered authoritative. Expertise is recognized at the national level across the Laboratory, service, DoD agencies, industry, and/or academia.	Sets objectives and plans, designs, and directs work to meet evolving organizational goals. Agency provides only broadly defined missions and functions. Leadership is recognized at the national/international level across various laboratories, services, DoD, industry and/or academia.

KEY ELEMENTS	DR COMMUNICATION FACTOR			
	DR I	DR II	DR III	DR IV
Level/ Breadth	Prepares information to use within own organization and technical area. Exchanges information with other functional areas or external contacts.	Provides information to peers, senior technical leaders, and/or managers within and beyond own organization to influence decisions or recommend solutions. Exchanges information with established internal/external networks.	Communicates complex technical, programmatic, and/or management information across multiple organizational levels to drive decisions by senior leaders. Collaborates with broad functional and technical areas.	Communicates with a wide range of peers/organizations across multiple levels inside and outside the Laboratory to influence major technical, programmatic, and/or management activities. Builds collaborative relationships across broad functional and technical areas and engages with leaders at the national and/or international level.
Written	Documents routine information in a clear and timely manner. Effectively utilizes communications tools to contribute to reports, documents, presentations, etc.	Documents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Authors reports, documents, and presentations pertaining to area(s) of expertise.	Leads documentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Authors and enables authoritative reports, documents, and presentations pertaining to multiple areas of expertise.	Promotes a culture of excellence in synthesizing and documenting diverse and highly complex information, concepts, and ideas. Authors and directs authoritative reports, documents, and presentations integrating multiple disciplines.
Oral	Presents routine information in a clear and timely manner. Actively listens and responds appropriately. Develops speaking skills for basic briefings and effectively adjusts to the audience with guidance.	Presents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Actively listens to others' questions, ideas, and concerns and considers diverse viewpoints. Demonstrates effective speaking skills for advanced briefings, tailoring presentations to facilitate understanding.	Leads presentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Seeks opinions and ideas from others and carefully considers and incorporates diverse viewpoints. Demonstrates expert speaking skills and adaptability for critical briefings.	Develops strategies to improve presentations of diverse and highly complex information, concepts, and ideas. Fosters an atmosphere of respect for others at all levels and promotes expression of alternative viewpoints. Displays mastery of speaking skills and delivers compelling, authoritative briefings.
Review/ Oversight	Provides reports, documents, and presentations to senior personnel for review. Makes necessary revisions per guidance from senior personnel.	Reviews own communication products prior to submittal to peers, senior technical leaders, managers, and/or external contacts, resulting in minimal revision. May assist with the communications of others.	Produces required forms of communication with minimal guidance from others. Reviews communications of others for appropriate and accurate content.	Establishes guidance and oversight requirements for communication in their organizational or technical area. Responsible and accountable for overall development of reports, documents, and presentations of self and others within area of responsibility.

KEY ELEMENTS	DR TECHNOLOGY MANAGEMENT FACTOR			
	DR I	DR II	DR III	DR IV
Level/Scope/ Complexity	Interacts within technical area on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of technical goals within own organization.	Collaborates with technical area stakeholders to develop strategies for effective execution within a particular technology area. Executes activities within and beyond own organization that ensure the technology mission.	Leads technology partners in highly complex technical areas to develop strategies for research and development programs. Leads development and execution at a broad level in the Laboratory to advance the technology mission.	Integrates wide-ranging activities at a national/international level, involving multiple technical areas, to develop strategic technology solutions. Directs program/process formulation and implementation to achieve the mission goals at the Laboratory/multi-agency level.
Opportunities/ Entrepreneurism/ Planning	Participates in technology area planning within own organization. Contributes technical ideas to proposal preparation and new technology development.	Recognizes opportunities and formulates plans within own organization. Generates key ideas and contributes technically to proposal preparation and marketing to establish new business opportunities. Identifies and advocates for resources necessary to support and contribute to mission requirements.	Leads/contributes significantly to program definition and/or planning. Pursues near-term business opportunities by exploiting internal and/or external resources. Identifies and develops mission relevant solutions while leveraging collaborations across the Laboratory.	Leads requirements generation, strategic planning, and prioritization. Creates business opportunities based upon market awareness and exploitation of internal and/or external resources. Identifies, proposes and develops diverse and timely mission relevant solutions while leveraging national/international collaborations.
Resource Stewardship	Efficiently performs tasks utilizing available resources, including one's own time, to successfully accomplish assigned work. Provides inputs to risk management and process improvements.	Demonstrates knowledge of corporate processes by effective application of resources. Actively manages cost, schedule, and resource risks, seeking timely remedies. Engages others in using resources more efficiently and suggests innovative ideas to optimize available resources.	Monitors evolution of cost, schedule, and resource risk. Anticipates changes in resource requirements and develops and advocates solutions in advance. Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources.	Manages and defends the resources needed to achieve organizational goals and expertly guides the implementation of these resources in a dynamic environment. Leads, promotes, and enables process improvements to maximize resource utilization.
Technology Exploitation/ Transition	Contributes within own organization to the development and transition of technology solutions. Seeks out and uses relevant outside technologies to support own technical and functional activities.	Implements the development and transition/transfer of technology solutions, within or beyond own organization, based upon awareness of customer requirements. Evaluates and incorporates appropriate outside technology to support research and development.	Leads development and transition/transfer activities based upon extensive customer interactions and appropriate partnerships. Develops technology solutions by exploiting external technology to enhance research and development.	Leads world class research and development programs based upon anticipating customer requirements and leveraging national/international activities. Develops innovative solutions that exploit emerging technology and fosters an environment of technology exploitation.

KEY ELEMENTS	DR TEAMWORK AND LEADERSHIP FACTOR			
	DR I	DR II	DR III	DR IV
Level/Scope/ Breadth of Influence	Performs work within a team that improves capability of a technology area or organization. Coordinates actions and gains understanding of other areas sufficiently to make appropriate recommendations.	Performs work as a key team member or leads others to improve capability of a technology area or organization. Integrates efforts or works across disciplines. Provides consultation on complex issues.	Leads critical aspects of team or technology area with focused accountability for quality and effectiveness. Integrates efforts across disciplines. Sought out for consultation on complex issues that affect internal/external organizations and/or relationships.	Leads/manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization. Has broad and substantial impact on organizational decisions affecting internal/external organizations and/or relationships.
Teaming and Collaboration	As team member, makes positive contributions in assigned areas to meet team goals. Shares relevant knowledge and information with others. Develops positive working relationships with peers and superiors alike.	As lead or key team member, makes significant contributions to meet team goals in support of the organizational goals. Works collaboratively with others in a dynamic environment, demonstrating respect for other people and alternative viewpoints. Recognizes when others need assistance and provides support.	Effectively seeks out and capitalizes on opportunities for collaboration to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams.	Cultivates and sustains a professional environment of cooperation, cohesion and teamwork. Formulates short- and long-term teaming/collaboration strategies across organizations/disciplines. Establishes team charters. Builds coalitions to establish integrated approaches that meet overall organizational mission requirements.
Mentoring and Development	Maintains currency in area of expertise. Actively seeks guidance/opportunities to improve/expand skills.	Assists in the development and training of internal/external team members. Works to develop/improve self in order to more effectively accomplish team goals. May recommend selection of team members.	Leads and supports the development and training of subordinates and/or internal/external team members. Actively seeks out mentoring opportunities. Proactively develops/improves self in order to more effectively accomplish organizational goals. Recommends selection and/or selects team members.	Mentors and develops future organizational leaders and personnel through evaluations/feedback. Fosters a culture that encourages and rewards mentoring and development. Proactively develops/improves self in order to more effectively accomplish agency goals. Identifies and addresses skill deficiencies and selects team members.
Oversight Required/ Provided	Receives close guidance from others. Performs duties in a professional, responsive, and cooperative manner in accordance with established policies and procedures.	Receives general guidance in terms of established policies, objectives, and decisions from others. Discusses novel concepts and significant departures from previous practices with supervisor or team leader.	Receives only broad policy/guidance. Provides guidance/direction to others. May participate in position and performance management.	Works within the framework of agency policies, mission objectives, and time and funding limitations with minimal oversight. Establishes policy and/or provides guidance/direction to others. Responsible for position and performance management.

BUSINESS MANAGEMENT AND PROFESSIONAL CAREER PATH, PAY PLAN DO

KEY ELEMENTS	DO PROBLEM SOLVING FACTOR			
	DO I	DO II	DO III	DO IV
Scope/Impact	Applies knowledge of business management or a professional field to perform duties supporting and/or improving the efficiency and productivity of the organization.	Develops new methods, criteria, policies, or precedents for business management or a professional field. Modifies or adapts established methods and approaches to complex issues that affect a wide range of organizational activities. May administer one or more complex programs within a functional area.	Performs duties across a broad range of activities that require substantial depth of analysis and organizational problem solving skills. Implements or recommends decisions which significantly impact agency policies/programs.	Defines, leads, and manages an overall business management or professional program area which includes a full range of complex functional areas. Makes critical decisions which significantly change, interpret, or develop important agency policies/programs.
Complexity	Analyzes and resolves difficult but routine problems within assigned area of responsibility, sometimes under the guidance of a senior specialist. Includes minor adaptation to established methods and techniques.	Applies substantial knowledge of business management or a professional field to analyze and resolve highly complex issues and problems. Includes refinement of methods or development of new ones.	Resolves critical problems or develops new theories for work products or services which affect the work of other experts, the development of major aspects of business management programs or missions, or impacts a large number of people. Assignments involve continual program changes or conflicting requirements.	Applies considerable judgment and ingenuity to interpret existing guidelines and develop policies and procedures for broadly based projects/programs.
Independence	Plans and carries out work based on established guidelines and supervisor's stated priorities and deadlines. Completed work is evaluated for soundness, appropriateness, and conformity to policy and requirements.	Consults with supervisor to develop deadlines, priorities, and objectives. Plans and carries out work, effectively resolving most conflicts that arise. Keeps supervisor informed of potentially controversial issues. Completed work is reviewed primarily for meeting requirements and producing expected results.	Supervisor outlines general objectives. Independently plans and carries out the work. Complex issues are resolved without reference to supervisor except for matters of a policy nature. Results are considered technically authoritative and are normally accepted without significant change.	Independently plans, designs, and carries out programs, projects, studies, etc., such that overall program objectives are met. Supervisor provides only broadly defined missions and functions. Results of work are considered technically authoritative and are almost always accepted without change.
Creativity	Uses judgment in selecting, interpreting, and adapting guidelines that are readily available.	Uses initiative and resourcefulness in interpreting and applying policies, precedents, and guidelines that are applicable but may be conflicting or stated only in general terms. Uses considerable judgment and originality in developing innovative approaches to define and resolve highly complex situations.	Uses judgment and ingenuity in making decisions in major areas of uncertainty in methodology, interpretation and/or evaluation. Guidelines require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, criteria, or propose new policies.	Guidelines are broadly stated and non-specific. Generates/implements innovative ideas for increasing overall effectiveness of the organization.

KEY ELEMENTS	DO COMMUNICATION FACTOR			
	DO I	DO II	DO III	DO IV
Level of Influence	Factual information and material is normally presented to individuals within immediate office or within own organization, but may involve external contacts.	Communicates important concepts to influence decisions or recommend solutions with specialists and management officials in own organization. Occasionally communicates with individuals at higher levels and in other organizations.	Influences consensus among management officials within AFRL, AF, and in other agencies and organizations to accept ideas and implement recommendations designed to improve effectiveness of major programs and policies.	Interacts with high-ranking officials to include AF level, other agencies, and departments to influence major program policies and/or defend controversial decisions. May also communicate with leaders at the local, state, and/or national levels for similar purposes.
Written	Communicates routine information in a clear and timely manner. Develops formal written communication often with supervisory review and revision.	Communicates moderately complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision.	Communicates complex information, concepts, and ideas in an accurate, clear, concise, well-organized, and timely manner. Written communication typically accepted without revision.	Tailors style to communicate critical information effectively to diverse audiences at different levels. Accurately communicates complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision.
Oral	Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions. With guidance, effectively adjusts communications to the audience's level of understanding. Has speaking skills required to deliver basic briefings.	Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints and appropriately responds to questions or requests. Effectively adjusts communications to facilitate understanding. Tailors presentations and briefings to meet an audience's needs and level of understanding.	Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses tone that respects and carefully considers diverse viewpoints, responding appropriately. Clearly communicates complex information, concepts, and ideas through briefings and presentations to a wide range of audiences.	Receptive to alternative viewpoints. Clearly communicates complex information and ideas to a range of audiences. Shows respect for others and responds appropriately to people at all levels. Delivers compelling policy level briefings.

KEY ELEMENTS	DO BUSINESS MANAGEMENT FACTOR			
	DO I	DO II	DO III	DO IV
Level and Purpose	Interacts with customers on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of business goals of the organization.	Works with customers to define/anticipate problems and develop strategies for effective resolution within a particular program area. Supports execution of activities that advance the business-related goals of the organization.	Works jointly with customers to identify highly complex, sensitive, or controversial problems and develop strategies for effective resolution. Contributes to refinement of the business-related goals of the organization.	Interacts at senior management levels to negotiate and resolve conflicts concerning activity-wide policies and programs. Resolutions are communicated across the organization/agency. Contributes to the definition and improvement of processes that affect the business goals of the organization.
Customer Relations	Provides timely, flexible, and responsive products and/or services to customers under guidance of senior specialist or supervisor.	Develops innovative or useful suggestions for designing and adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs.	Establishes successful working relationships with customers to address and resolve highly complex and/or controversial issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction.	Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Develops innovative and useful approaches for improving or expanding products and/or services, resulting in highly valued services that improve overall customer satisfaction.
Effectiveness	Contributes ideas for improvement of established services based on knowledge of a variety of business management or professional programs and systems, and an understanding of customer needs.	Contributes key ideas and/or strategies to develop, implement, and promote new/improved programs or services applicable to business management or a professional field.	Develops effective plans and strategies for highly complex programs or services involving broad business management or a professional field. Successfully carries out and maintains such programs/services at a high level of customer awareness and satisfaction.	Generates strategic plans and objectives to develop, implement, and promote broadly-based programs and services to meet organizational needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services.
Resource Management	Demonstrates knowledge of available resources and the process for acquiring the resources needed to accomplish assigned work. Makes effective use of available resources including one's own time.	Identifies and advocates for resources necessary to support and contribute to mission requirements. Maximizes use of available resources.	Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.	Identifies, acquires, defends, and manages the resources needed to achieve organizational goals.

KEY ELEMENTS	DO TEAMWORK AND LEADERSHIP FACTOR			
	DO I	DO II	DO III	DO IV
Team Role	Makes positive contributions to all aspects of the overall team's responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities.	Contributes as lead or key member of the team performing the substantive analytical or professional duties in support of the organizational mission.	Effectively seeks out and capitalizes on opportunities for the work unit to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles.	Formulates short- and long-term strategies across subordinate units to achieve significant results in support of the organization's goals and long-term vision.
Breadth of Influence	Performs work that affects the accuracy, reliability, or acceptability of broader projects and programs. Coordinates joint actions and gains understanding of other areas sufficient to make appropriate recommendations.	Effectively carries out integrated advisory and program work. Leads/mentors/provides oversight to specialists at same or lower level. Regularly consulted by management officials on complex issues due to depth and breadth of expertise.	Guides the critical aspects of programmatic and business management efforts of individuals and/or teams with focus on accountability, quality, and effectiveness. Has impact on business recommendations that affect both internal and external relationships.	Leads and manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization.
Cooperation	Works flexibly with others to accomplish team goals. Treats others fairly and professionally. Shares relevant knowledge and information with others. May participate as a member of cross-functional teams.	Works collaboratively and flexibly with others to accomplish team goals. Treats others fairly and professionally. Shares relevant knowledge and information with others. Recognizes when others need assistance and provides support. May participate as a member of cross-functional/integrated teams.	Leads and provides oversight to effectively manage integrated advisory and program services. Regularly consulted by management officials on highly complex issues. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams.	Builds coalitions to establish integrated approaches to meet overall organizational mission requirements. Sets and maintains a tone of cooperation, cohesion, and teamwork. Champions respect and value for others.
Supervision and Subordinate Development	May select or recommend selection of staff or team members.	Selects or recommends selection of staff or team members. Supports development and training of subordinates. Participates in mentoring and position/performance management.	Selects or recommends selection of staff, team members, and/or subordinate supervisors. Initiates development and training of subordinates. Participates in mentoring, motivation, coaching, instruction, and position/performance management.	Selects or recommends selection of staff, team members, and subordinate supervisors. Initiates development and training of subordinates. Directs or recommends mentoring and position/performance management. Develops future team leaders and supervisors.

TECHNICIAN CAREER PATH, PAY PLAN DX

KEY ELEMENTS	DX PROBLEM SOLVING FACTOR			
	DX I	DX II	DX III	DX IV
Scope/Impact	Applies basic knowledge to perform well-defined work activities with guidance. Performs specific procedures which are typically a segment of a project of broader scope. Work products affect the accuracy, reliability, or acceptability of further procedures, processes, or services.	Plans and conducts work which is a complete project of relatively limited scope or a portion of a large and more diverse project. Work affects the operation of systems, equipment, testing operations, research conclusions, or similar activities.	Establishes criteria, formulates projects, assesses program effectiveness, and investigates a variety of unusual conditions or problems in areas which affect a wide range of major activities. Identifies areas for investigation or improvement. Work affects the design of systems, equipment, testing operations, research conclusions, or similar activities.	Provides expert advisory services and leadership for broad and complex programs, systems, and processes that advance the state of the art. Plans, organizes, and/or directs extensive development efforts associated with the latest advancements in technology.
Complexity	Performs duties that involve related and established steps, processes or methods. Operates and adjusts varied equipment and instrumentation to perform standardized tests or operations involved in testing, data analysis, and presentation.	Applies practical knowledge of different but established technical methods, principles, and practices within a narrow area to design, plan, and carry out projects. Assignments require study, analysis, and consideration and selection of several possible courses of action.	Applies considerable knowledge of a wide range of technical methods, principles, and practices to design, plan, and carry out complex projects. Assignments are frequently complicated by many operations which equipment or systems must perform, and many variables that must be considered. Precedents are sometimes absent or obscure. Handles conflicting issues.	Projects are multi-disciplinary and are greatly affected by advances in technology. Projects are also characterized by highly complex problems for which precedents are lacking. Uses judgment and ingenuity to convert objectives into programs or policies. Adjusts broad activities to align with changing program needs.
Independence	Executes routine assignments without explicit instructions if standard work methods can be used. Resolves recurring routine problems with little supervision.	Supervisor outlines overall requirements, providing general instructions regarding objectives, time limitations, and priorities. Plans and carries out successive steps and handles problems in accordance with accepted practices or instructions. Completed work is evaluated for technical soundness, appropriateness, and conformity.	Supervisor outlines general requirements and objectives. Analyzes problems and develops approaches/work plans. Requires little to no technical advice or guidance. Technical decisions and recommendations are normally accepted by higher authority.	Supervisor outlines only broad policy and operational objectives/requirements. Technical supervision is limited to reviewing broad hypotheses and overall approach. Interpretations are generally accepted as technically authoritative.
Creativity	Uses judgment in locating and selecting the most appropriate procedures, making minor deviations to adapt the guidelines to specific cases.	Applies knowledge and experience to a broad range of assignments. Seeks novel solutions where appropriate. Adapts previous plans/techniques to fit new situations.	Applies extensive knowledge to unusual or highly difficult assignments. Reviews, analyzes, and integrates work performed by others along with adaptations from changes in technology as they relate to the possible impact on projects, systems or processes.	Creates new techniques, establishing criteria and/or developing new information. Approach is not easily determined and novel approaches or considerable modification of existing techniques is required. May contribute to or publish technical papers on modification of existing theories or technology.

KEY ELEMENTS	DX COMMUNICATION FACTOR			
	DX I	DX II	DX III	DX IV
Level of Influence	Acquires or exchanges information with individuals on same team or within own organization for routine and recurring issues. May involve limited external contacts.	Communicates with co-workers and management officials in own organization in order to plan and coordinate work, communicate important technical concepts and requirements or recommend solutions. Also, communicates with various individuals at higher levels and in other organizations.	Communicates with employees and management officials both within own organization and in organizations outside the agency to resolve problems, accept ideas, and implement recommendations designed to improve effectiveness of operating systems, programs, equipment, or services.	Interacts with individuals or groups in various agencies and departments to influence and/or defend controversial decisions.
Written	Communicates routine information in a clear and timely manner. Written communication may require some revision.	Communicates information in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision.	Communicates complex information in a clear, concise, well-organized, and timely manner. Written communication is typically accepted without revision.	Tailors style to communicate critical information effectively to diverse audiences at different levels. Communicates complex information in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision.
Oral	Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions. With guidance, effectively adjusts communications to facilitate understanding.	Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints. Tailors communications to ensure an effective level of understanding. Clearly responds to questions or requests, following up when appropriate.	Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints, responding appropriately. Communicates complex information, concepts, and ideas through briefings or presentations to audiences in a manner that facilitates understanding. Clearly responds to questions or requests with follow up when appropriate.	Prepares and delivers briefings to communicate complex information and ideas to a range of audiences in a manner that facilitates understanding. Receptive to alternative or dissenting viewpoints. Shows respect for others and responds appropriately to people at all levels.

KEY ELEMENTS	DX BUSINESS MANAGEMENT FACTOR			
	DX I	DX II	DX III	DX IV
Level and Purpose	Interacts with customers to communicate information and coordinate routine actions within area of assigned responsibility. Conducts duties in support of business goals of the organization.	Works with customers to define/anticipate problems and develop strategies for effective resolution within technical areas. Supports execution of activities that advance the business-related goals of the organization.	Works with customers to identify highly complex or controversial problems and develop strategies for effective resolution. Contributes to refinement of the business-related goals of the organization.	Interacts at senior management levels to negotiate and resolve conflicts affecting a wide-range of activities. Contributes to the definition and improvement of processes that affect the business goals of the organization.
Customer Relations	Provides timely, flexible, and responsive products, and/or services to customers under guidance of senior technician or supervisor.	Develops innovative or useful suggestions for designing and adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs.	Establishes successful working relationships with customers to address and resolve highly complex and/or controversial issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction.	Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Develops innovative and useful approaches for evaluating and improving operations, equipment, and/or activities resulting in highly valued services that improve overall customer satisfaction.
Effectiveness	Contributes ideas for improvement of products and services to project lead/supervisor based on an understanding of customer needs.	Contributes key ideas and/or strategies to develop, implement, and apply new/improved methods and procedures applicable to technical areas.	Develops effective plans and strategies for highly complex products or services involving a broad technical area. Successfully carries out and maintains services at a high level of customer awareness and satisfaction.	Stays appraised of current technologies and methods to develop techniques for new or modified work methods, approaches, or procedures, for substantive functions and services to meet organizational and customer needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services.
Resource Management	Efficiently utilizes available resources, including one's own time, to successfully accomplish assigned work.	Anticipates, identifies, and advocates for resources necessary to support and contribute to mission requirements. Maximizes use of available resources.	Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.	Plans and allocates resources to accomplish multiple customer needs simultaneously across the organization. Develops and implements innovative approaches to attain goals and minimize resource expenditures.

KEY ELEMENTS	DX TEAMWORK AND LEADERSHIP FACTOR			
	DX I	DX II	DX III	DX IV
Team Role	Makes positive contributions to specific aspects of the team's responsibilities. Actively takes initiative to expand knowledge and assume more responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities.	Makes positive contributions to multiple aspects of the team's responsibilities. Shares knowledge and experience with team members.	Is sought out for consultation and serves as a mentor to other team members. Seeks out opportunities to share experience and lessons learned with other team members, both internal and external to own organization.	Recognized as a prominent contributor to key technical fields as a leader of a productive team directly contributing to the organization's mission. Considered a leader in the conception and formulation of innovative concepts and ideas.
Breadth of Influence	Provides work product that is a complete project of relatively conventional and limited scope or a portion of a larger project. Work requires a limited degree of coordination and integration of diverse phases carried out by others.	Provides work product that is a complete conventional project, or a portion of a larger, more diverse project. Projects require coordination of several independent parts, each requiring independent analysis and solution.	Manages highly difficult assignments in functional areas. Acts as a spokesperson authorizing important modifications which conform to broad policy. Coordinates assignments with subject matter experts in other areas. Reviews, analyzes, and integrates work performed by other groups or individuals outside the organization.	Serves as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with significant technical issues. Responsible for ensuring team composition is sufficient to meet program objectives.
Cooperation	Personal interactions foster cooperation and teamwork. Works effectively with others to accomplish tasks. Treats others respectfully and professionally. Provides information and assistance to others as needed. Attempts to handle minor work-related disagreements in a positive manner.	Works collaboratively and flexibly with others to accomplish team goals. Treats others respectfully and professionally. Shares relevant knowledge and information with others. Effectively contributes as a participating member on other teams.	Builds effective partnerships across units. Volunteers and actively serves in leadership roles on integrated teams. Regularly consulted by others on significant issues. Deals with challenging conflicts in a manner that motivates and encourages cooperation. Develops options to resolve disagreements that may require resolution at a higher level.	Contributes to achieving organizational goals by building flexible and effective partnerships. Successfully resolves sensitive conflicts. Actively works to ensure the continuous transfer of knowledge and skills throughout the work unit by serving as a technical resource and initiating or overseeing the development of formal knowledge sharing systems.
Supervision and Subordinate Development	N/A	Supports development and training of subordinates and/or co-workers. Participates in mentoring and position / performance management.	Provides recommendations for creation of teams. Develops and identifies new training needs for the professional growth of team members. Provides mentoring and position/performance management.	Selects or recommends selection of staff and/or team members. Develops and identifies new training needs for the professional growth of subordinates. Directs and provides mentoring and position/performance management. May formally supervise at team-level.

MISSION SUPPORT CAREER PATH, PAY PLAN DU

KEY ELEMENTS	DU PROBLEM SOLVING FACTOR			
	DU I	DU II	DU III	DU IV
Scope/Impact	Performs clerical/assistant/support work involving the application of a body of standardized rules, procedures, or operations to resolve a variety of standard, recurring requirements. Work affects the quality and timeliness of products or services within the immediate office.	Applies well-developed knowledge and skills to effectively perform a full range of moderately complex clerical/assistant/support work. Work affects the quality and timeliness of products or services within the organization.	Performs clerical/assistant/support work involving application of an extensive body of rules, procedures, and operations to resolve a wide variety of complex organizational support activities. Work may occasionally have influence beyond immediate organization. Work has a direct impact on the effectiveness and efficiency of the work products and services of specialists within the organization.	Applies expert-level knowledge and skills to effectively perform a wide-range of highly complex organizational support activities. Work often has influence beyond immediate organization. Work has a direct and significant impact on the effectiveness and efficiency of the work products and services of specialists and management officials within the organization. Typically leads other mission support personnel in defining and carrying out overall organizational support objectives.
Complexity	Applies standard rules, procedures, or operations to accomplish repetitive tasks and resolve routine matters.	Applies standard rules, procedures, or operations to accomplish a variety of tasks and resolve moderately complex matters.	Applies considerable knowledge of the rules, procedures, and operations to accomplish a variety of tasks within the assigned area of responsibility. Applies guidelines and techniques to resolve complex problems involving related, procedural processes.	Develops guidelines, techniques, procedures, and/or operations for the most complex and difficult problems within the subject matter area for the organization.
Independence	Carries out recurring and routine work, following supervisor's direction regarding work to be done, priorities, and specific procedures/guidelines to be followed. Completed work is reviewed for accuracy, timeliness, and adherence to instructions.	Supervisor defines objectives, priorities, and deadlines. Independently plans and carries out steps required to complete assignments. Resolves recurring problems/deviations without assistance. Completed work is reviewed for accuracy, timeliness, and compliance with established methods/procedures/guidelines.	Supervisor defines overall objectives, priorities, and deadlines. Works independently, resolving difficult problems that may arise. Completed work is reviewed for accuracy and compliance with established methods/procedures.	Operates with a great deal of independence. Plans and carries out assignments such that overall program objectives are met. Recommendations are generally accepted as technically authoritative. Work is evaluated only for conformance with broad objectives and is almost always accepted without change.
Creativity	Uses judgment in selecting and applying guidelines which are readily available.	Takes initiative to identify, locate, and appropriately apply guidelines and procedures.	Selects, interprets, and applies guidelines which are available but not completely applicable or have gaps in specificity. Uses considerable judgment by applying modified or new guidelines to resolve unique problems. May assist in the development of new guidelines for administrative procedures.	Applies considerable judgment and ingenuity to interpret existing policies/procedures and develop new guidelines and techniques that have a direct impact on specific programs/services within the organization.

KEY ELEMENTS	DU COMMUNICATION FACTOR			
	DU I	DU II	DU III	DU IV
Level of Influence	Communicates with individuals primarily in own organization in order to exchange information and present findings.	Communicates with co-workers and management officials in own organization in order to plan and coordinate work, communicate important concepts and requirements, or recommend solutions. Also, communicates with counterparts at various levels both inside and outside the organization.	Routine contacts are with co-workers, managers in organizations for which services are performed, and staff at higher echelons to coordinate work, communicate important concepts and requirements, or recommend solutions. May also interact with individuals in other agencies/departments or public office.	Routine contacts are with co-workers, managers in organizations for which services are performed, and staff at higher echelons to coordinate work, communicate important concepts and requirements, or recommend solutions. May also interact with high-ranking individuals in other agencies, departments, or public office.
Written	Communicates routine information in a clear and timely manner. Written communication may require some revision.	Communicates information in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision.	Communicates moderately complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication typically accepted without revision.	Tailors style to communicate critical information effectively to diverse audiences at different levels. Communicates complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision.
Oral	Clearly communicates status of assigned tasks. Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions.	Actively listens and appropriately responds to questions and concerns from others. Shows respect for others' ideas, comments, and questions. With guidance, effectively adjusts communications to facilitate understanding.	Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints and clearly responds to questions or requests, following up to ensure understanding. Tailors communications to ensure an effective level of understanding.	Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints, responding appropriately. Communicates complex information, concepts, and ideas through briefings or presentations to a range of audiences in a manner that facilitates understanding.

KEY ELEMENTS	DU BUSINESS MANAGEMENT FACTOR			
	DU I	DU II	DU III	DU IV
Level and Purpose	Interacts with customers on routine issues to communicate information and clarify instructions for tasking within area of assigned responsibility. Conducts administrative duties in support of business goals of the organization.	Effectively interacts with customers to understand their needs, answer questions, and provide routine information about products and/or services. Supports execution of activities that advance the business-related goals of the organization.	Serves as a central point of contact to provide authoritative explanations of requirements, regulations, and procedures, and to effectively resolve problems or disagreements affecting assigned areas. Contributes to refinement of the business-related goals of the organization.	Interacts at senior management levels to negotiate and resolve conflicts affecting a wide-range of mission support activities. Assists in the definition and improvement of processes that affect the business goals of the organization.
Customer Relations	Provides timely, flexible, and responsive products and/or services to customers under guidance of senior team member or supervisor.	Takes initiative to develop innovative ideas for adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs.	Establishes successful working relationships with customers to address and resolve complex and/or controversial mission support issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction.	Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Establishes innovative and useful approaches for evaluating and improving mission support operations, processes, and/or activities resulting in highly valued services that improve overall customer satisfaction.
Effectiveness	Suggests ideas for improvement of products and services based on an understanding of customer needs.	Develops effective plans and strategies for improving the effectiveness of important products or services for an identified mission support area. Successfully provides services with a high level of customer satisfaction.	Develops and implements effective plans and strategies for improving important products or services involving a broad mission support area. Successfully provides services with a high level of customer awareness and satisfaction.	Takes initiative to develop and implement techniques for new or modified methods, approaches, or procedures for substantive mission support functions and services to meet organizational and customer needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services.
Resource Management	Efficiently utilizes available resources to successfully accomplish assigned work. Appropriately prioritizes work; manages own time.	Identifies and advocates for resources necessary to support and contribute to mission requirements.	Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.	Identifies, acquires, defends, and manages the resources needed to accomplish duties directly supporting organizational goals. Balances competing resource requirements to ensure alignment with mission objectives.

KEY ELEMENTS	DU TEAMWORK AND LEADERSHIP FACTOR			
	DU I	DU II	DU III	DU IV
Team Role	Contributes to specific aspects of the team's responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities.	Contributes as a member of the team performing substantive clerical/assistant/support duties in support of the organizational mission. Assists in the development and training of individuals or team members. Participates in mentoring and assists with team management.	Effectively seeks out and capitalizes on opportunities to assist specialists/managers in achieving significant results that support organizational goals. Is sought out for consultation.	Recognized as a significant contributor within a key mission support area by serving as a leader of a productive team or a leader in the conception and formulation of relevant concepts and ideas.
Breadth of Influence	Provides work product or service of limited scope that requires a minimal degree of coordination and integration of work carried out by others.	Effectively carries out important mission support work. Leads/mentors/provides oversight to employees at same or lower level. Regularly assists specialists/managers on support issues due to depth of knowledge and breadth of expertise.	Accomplishes and/or guides the critical aspects of mission support efforts with focus on accountability, quality, and effectiveness. Assists in development of guidelines and processes that affect mission performance.	Serves as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with significant mission support issues.
Cooperation	Personal attitude/conduct fosters cooperation and teamwork needed to accomplish tasks. Treats others fairly and professionally. Provides information and assistance to others as requested/needed. Attempts to handle minor work-related disagreements in a positive manner.	Works flexibly with others to accomplish team goals. Treats others fairly and professionally. Seeks opportunities to share relevant knowledge and information with others. May participate as a member on other teams.	Leads and/or provides oversight for integrated mission support services. Regularly consulted by others on significant issues. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams.	Contributes to achieving organizational goals by building flexible and effective partnerships. Manages the most sensitive conflicts in a positive manner. Actively works to foster collaboration by serving as a leadership resource.
Supervision and Subordinate Development	N/A	N/A	May recommend selection of staff or team members. Initiates development and training of subordinates. Participates in mentoring and position/performance management. Develops others through mentoring, coaching, and instruction.	Selects or recommends selection of staff, team members, and subordinate supervisors. Formal supervisors in this broadband conduct performance evaluation/rating of subordinates. Initiates development and training of subordinates. Directs or recommends mentoring and position/performance management. Develops others through motivation, mentoring, coaching, and instruction.

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Federal Register

Tuesday,
May 18, 2010

Part III

The President

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Title 3—

The President

Proclamation 8519 of May 13, 2010

Emergency Medical Services Week, 2010

By the President of the United States of America

A Proclamation

Every day of the year, at all hours of the day and night, we rely on emergency medical services (EMS) professionals and volunteers for critical care in our homes, on our roads, in our hospitals, and wherever needs exist. EMS teams serve all Americans, standing ready to respond at a moment's notice, and tirelessly enhancing our country's preparedness and resilience. During Emergency Medical Services Week, we recommit to supporting all EMS providers, and we celebrate their selflessness and courageous contributions to our Nation.

Our EMS system includes a wide array of dedicated specialists, including emergency medical technicians, 9–1–1 dispatchers, paramedics, firefighters, law enforcement officials, educators, nurses, and physicians. From rural regions of our Nation to our busiest urban centers, EMS teams provide access to quality care when unforeseen illness, injury, or disaster strikes. The aid they administer cuts across various disciplines and often requires split-second decisions, essential to preventing disability or death among their fellow citizens.

My Administration is committed to supporting EMS providers and their important mission. The Affordable Care Act, which I signed into law this year, authorizes innovative new emergency care and trauma systems, and improves and expands EMS for children. It also prohibits insurance companies from imposing prior authorization requirements or increased cost-sharing for emergency services.

EMS providers spend long hours to further their medical education, train themselves on the latest life-saving techniques, and maintain vital emergency equipment, often choosing to do so on their own time and at their own expense. Many communities rely heavily, or even exclusively, on committed volunteers to provide out-of-hospital EMS. The role of EMS providers extends beyond performing services themselves, however. They also act as instructors to train ordinary Americans, because bystanders are often the first to arrive at the scene of a crisis. These heroic professionals, volunteers, and citizens form a network that has long supported our health care system, and their example is an inspiration to us all.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 16 through May 22, 2010, as Emergency Medical Services Week. I encourage all Americans to observe this occasion with programs and activities to support their local EMS workers and to improve their own safety and preparedness skills.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–12069
Filed 5–17–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Executive Order 13542 of May 13, 2010

Providing an Order of Succession Within the Department of Agriculture

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered that:

Section 1. *Order of Succession.* (a) Subject to the provisions of section 2 of this order, the following officials of the Department of Agriculture, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Agriculture (Secretary) during any period in which both the Secretary and the Deputy Secretary of Agriculture (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary, until such time as the Secretary or Deputy Secretary is able to perform the functions and duties of that office:

(1) Assistant Secretary of Agriculture for Administration;

(2) Under Secretary of Agriculture for Marketing and Regulatory Programs;

(3) Under Secretary of Agriculture for Food, Nutrition, and Consumer Services;

(4) Under Secretary of Agriculture for Food Safety;

(5) Under Secretary of Agriculture for Natural Resources and Environment;

(6) Under Secretary of Agriculture for Farm and Foreign Agricultural Services;

(7) Under Secretary of Agriculture for Rural Development;

(8) Under Secretary of Agriculture for Research, Education, and Economics;

(9) General Counsel of the Department of Agriculture;

(10) Chief of Staff, Office of the Secretary;

(11) Director, Kansas City Commodity Office, Farm Service Agency;

(12) State Executive Directors of the Farm Service Agency for the States of California, Iowa, and Kansas, in order of seniority fixed by length of unbroken service as State Executive Director of that State;

(13) Regional Administrators of the Food and Nutrition Service for the Mountain Plains Regional Office (Denver, Colorado), Midwest Regional Office (Chicago, Illinois), and Western Regional Office (San Francisco, California), in order of seniority fixed by length of unbroken service as Regional Administrator of that Regional Office;

(14) Chief Financial Officer of the Department of Agriculture;

(15) Assistant Secretary of Agriculture for Civil Rights; and

(16) Assistant Secretary of Agriculture for Congressional Relations.

(b) If any two or more individuals designated in paragraphs (12) and (13) of subsection (a) were sworn in to, or commenced service in, their respective offices on the same day, precedence shall be determined by the alphabetical order of the State in which the individual serves.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) No individual who is serving in an office listed in section 1 shall act as Secretary unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

Sec. 3. Executive Order 13241 of December 18, 2001, as amended, is hereby revoked.

Sec. 4. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 13, 2010.

[FR Doc. 2010–12070
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