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Contents

Federal Register

Vol. 76, No. 63

Friday, April 1, 2011

Administrative Conference of the United States
NOTICES
Meetings:
Committees on Administration and Management, Collaborative Governance, and Judicial Review, 18144

Agricultural Marketing Service
RULES
Irish Potatoes Grown in Washington; Decreased Assessment Rate, 18001–18003
Raisins Produced From Grapes Grown in California; Increased Assessment Rate, 18003–18007
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18147–18148
Nominations for Members of National Organic Standards Board, 18148–18149

Agriculture Department
See Agricultural Marketing Service
See Food Safety and Inspection Service
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18144–18145
Privacy Act; Systems of Records, 18145–18147

Army Department
NOTICES
Patent Application Deadline:
Advanced Battery Technology Related Patents for Exclusive, Partially Exclusive, or Non-Exclusive Licenses, etc., 18194–18195
Privacy Act; Systems of Records, 18195–18198

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Bureau of Ocean Energy Management, Regulation and Enforcement

NOTICES
Meetings:
Ocean Energy Safety Advisory Committee, 18232

Centers for Disease Control and Prevention
NOTICES
Advisory Council for the Elimination of Tuberculosis Charter Renewal, 18220
Meetings:
Board of Scientific Counselors, Office of Public Health Preparedness and Response, 18221
Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health, 18220–18221

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18221–18223

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18223–18224
Awards:
Regents of University of Michigan, Anne Arbor, MI, 18224–18225
Proposed Funding Opportunities:
Special Initiative Concerning Assets for Independence Program, 18225–18226

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 18188–18189

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 18189–18190

Defense Department
See Army Department
RULES
Federal Acquisition Regulation; Government Property Disposal; Forms; CFR Correction, 18072
Federal Acquisition Regulations:
Clarification of Standard Form 26 – Award/Contract, 18322–18324
Federal Acquisition Circular 2005–51; Introduction, 18304
Federal Acquisition Circular 2005–51; Small Entity Compliance Guide, 18324
Women-Owned Small Business Program, 18304–18322
NOTICES
Meetings:
Defense Business Board, 18190–18191
Historical Advisory Committee, 18190
Privacy Act; Systems of Records, 18191–18193
Renewal of Department of Defense Federal Advisory Committees, 18193–18194
Termination of Department of Defense Federal Advisory Committee, 18194

Education Department
NOTICES
Applications for New Awards:
Asian American and Native American Pacific Islander-Serving Institutions Program, 18202–18208
European Union-United States Atlantis Program, 18198–18202

Employee Benefits Security Administration
NOTICES
Amendment to Prohibited Transaction Exemption 96–23 for Plan Asset Transactions Determined by In-House Asset Managers, 18255–18259

Employment and Training Administration
NOTICES
Change in Status of an Extended Benefit Period for Michigan, 18259
Delaware Triggering "on" Tier Four of Emergency Unemployment Compensation 2008 (EUC08), 18259–18260
Tier Four of Emergency Unemployment Compensation 2008; Pennsylvania, 18260

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program for Consumer Products:
Test Procedures for Residential Central Air Conditioners and Heat Pumps, 18105–18127
Energy Conservation Standards for Metal Halide Lamp Fixtures:
Public Meeting and Availability of Preliminary Technical Support Document, 18127–18130
NOTICES
Meetings:
Secretary of Energy Advisory Board, 18208–18209

Environmental Protection Agency
RULES
Approvals of Authority for Hazardous Air Pollutants:
California; Perchloroethylene Air Emission Standards from Dry Cleaning Facilities, 18064–18066
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Deletion of Norwood PCBs Superfund Site, 18066–18072
Procedures for Transportation Workplace Drug and Alcohol Testing Programs; CFR Correction, 18072–18073
Regulation of Fuels and Fuel Additives:
Changes to Renewable Fuel Standard Program; CFR Correction, 18066
PROPOSED RULES
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Deletion of Norwood PCBs Superfund Site, 18136–18137
NOTICES
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 18217–18218
Waivers from Buy American Requirement of the American Recovery and Reinvestment Act of 2009
Salt Lake City, UT, 18218–18219

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Model A340–200 and –300 Series Airplanes, 18038–18040
Boeing Co. Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; and DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes, 18022–18024
Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes, 18024–18029
DASSAULT AVIATION Model MYSTERE FALCON 50 Airplanes, 18031–18033
Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 Airplanes, 18029–18031
Piper Aircraft, Inc., Models PA–46–310P, PA–46–350P, and PA–46R–350T Airplanes, 18033–18038
Sicma Aero Seat 9140, 9166, 9173, etc., Series Passenger Seat Assemblies, 18020–18022
Amendment of Class E Airspace:
West Yellowstone, MT, 18040–18041
Establishment of Class E Airspace:
Kahului, HI, 18041–18042
PROPOSED RULES
Special Conditions:
Turbomeca Arriel 2D Turboshaft Engine, 18130–18132
NOTICES
Receipt of Noise Compatibility Program and Request for Review:
Kissimmee Gateway Airport, Kissimmee, FL, 18294

Federal Communications Commission
PROPOSED RULES
Amendment of Schedule of Application Fee, 18137–18138

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 18219

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18209–18210
Applications:
Symbiotics, LLC, 18211–18212
Texas Eastern Transmission, LP, 18210–18211
Complaints:
E.ON Climate and Renewables North America, LLC, et al. v. Midwest ISO, Inc., 18212
Environmental Assessments; Availability, etc.:
FPL Energy Maine Hydro LLC, et al., 18212–18213
Filings:
Ameren Services Co., Northern Indiana Public Service Co. v. Midwest Independent Transmission System Operator, Inc., et al., 18213
Corning Natural Gas Corp., 18213
Land Management Plan Updates:
Shoshone Falls Hydroelectric Project, 18213–18214
Land Management Plan Updates; Availability, etc.:
Idaho Power, 18214–18215
License Applications:
Birch Power Co., 18215
Requests Under Blanket Authorizations:
Southern Natural Gas Co., 18216
Shoreline Management Plans; Availability, etc.:
Dominion Virginia Power/North Carolina Power, 18216–18217
Updated Procedural Schedule For Licensing:
FirstLight Hydro Generating Co., et al., 18217

Federal Maritime Commission
NOTICES
Agreements Filed, 18219–18220

Federal Mediation and Conciliation Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Labor-Management Cooperation Grant Program, 18220

Federal Railroad Administration
RULES
Track Safety Standards; Concrete Crossties, 18073–18087
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18294–18298

Environmental Impact Statements; Availability, etc.:
DesertXpress High-Speed Passenger Train Project, 18298–18299

Fiscal Service
RULES
Securities; Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds, etc., 18062–18064

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Reclassification of Okaloosa Darter from Endangered to Threatened and Special Rule, 18087–18103
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
90-Day Finding on a Petition to List the Spring Pygmy Sunfish as Endangered, 18138–18143
NOTICES
Marine Mammals; Incidental Takes During Specified Activities, 18232–18238
Meetings:
Wind Turbine Guidelines Advisory Committee, 18238–18239
Permit Applications:
Endangered Species; Marine Mammals, 18239–18240

Food and Drug Administration
NOTICES
Guidance for Industry on Postmarketing Studies and Clinical Trials; Availability:
Implementation of Section 505(o)(3) of the Federal Food, Drug, and Cosmetic Act, 18226–18227
Meetings:
Medical Devices Advisory Committee Molecular and Clinical Genetics Panel, 18227

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Committee on Food Labeling, 18149–18150
Codex Committee on Fresh Fruits and Vegetables, 18150–18151

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Miller West Fisher Project, Kootenai National Forest, Lincoln County, MT, 18151–18153
Meetings:
Southwest Idaho Resource Advisory Committee, 18153

General Services Administration
RULES
Federal Acquisition Regulation; Government Property Disposal; Forms; CFR Correction, 18072
Federal Acquisition Regulations:
Clarification of Standard Form 26 – Award/Contract, 18322–18324
Federal Acquisition Circular 2005–51; Introduction, 18304
Federal Acquisition Circular 2005–51; Small Entity Compliance Guide, 18324
Women-Owned Small Business Program, 18304–18322
Federal Travel Regulations:
FTR Cases 2007–304 and 2003–309, Relocation Allowances, 18326–18345

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist Homeless, 18231–18232

Interior Department
See Bureau of Ocean Energy Management, Regulation and Enforcement
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
RULES
Taxpayer Assistance Orders, 18059–18062
PROPOSED RULES
Rewards and Awards for Information Relating to Violations of Internal Revenue Laws, 18134
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18301–18302

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation:
Opportunity to Request Administrative Review, 18153–18155
Upcoming Sunset Reviews, 18153
Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review:
Light-Walled Rectangular Pipe and Tube from Mexico, 18155
Polyethylene Terephthalate Film, Sheet and Strip from India, 18155–18156
Purified Carboxymethylcellulose from the Netherlands, 18156
Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review:
Polyethylene Terephthalate Film, Sheet and Strip from India, 18156–18157
Initiation of Antidumping Duty Administrative Reviews:
Certain Frozen Warmwater Shrimp from Brazil, India and Thailand, 18157–18163
Initiation of Five-Year (Sunset) Review, 18163–18165
Request for Public Comments Concerning Regulatory Cooperation Activities, etc., 18165

International Trade Commission
NOTICES
Complaints:
Certain Electronic Devices, Including Mobile Phones, etc., and Components Thereof, 18247
Certain Handheld Electronic Computing Devices, Related Software, and Components Thereof, 18246–18247
Certain Video Game Systems and Wireless Controller and Components Thereof, 18247–18248
Investigations:
Carbon and Alloy Seamless Standard, Line, And Pressure Pipe from Japan and Romania, 18251–18253

Sulfanilic Acid from China and India, 18248–18251

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
PROPOSED RULES
Reducing Regulatory Burden; Retrospective Review under E.O. 13563, 18104
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Family Medical Leave Act Employee and Employer Surveys, 18254–18255

Land Management Bureau
NOTICES
Competitive Coal Lease Sales:
Wyoming, 18240–18241
Environmental Impact Statements; Availability, etc.:
Energy Gateway South 500-Kilovolt Alternating Current Transmission Line Project in Wyoming, Colorado, and Utah, 18241–18243
Proposed Hycroft Mine Expansion Project, Humboldt and Pershing Counties, NV, 18243–18244
Meetings:
Utah Resource Advisory Council, 18244
Proposed Reinstatements of Terminated Oil and Gas Leases:
WYW164400, Wyoming, 18244
Public Land Order No. 7760; Extension of Public Land Order No. 6839; Alaska, 18244–18245
West Tavaputs Plateau Road Restriction Order, Utah, 18245–18246

Management and Budget Office
NOTICES
Draft 2011 Report to Congress on the Benefits and Costs of Federal Regulations, 18260–18261

Maritime Administration
NOTICES
Administrative Waivers of the Coastwise Trade Laws, 18299–18301

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation; Government Property Disposal; Forms; CFR Correction, 18072
Federal Acquisition Regulations:
Clarification of Standard Form 26 – Award/Contract, 18322–18324
Federal Acquisition Circular 2005–51; Introduction, 18304
Federal Acquisition Circular 2005–51; Small Entity Compliance Guide, 18324
Women-Owned Small Business Program, 18304–18322

National Highway Traffic Safety Administration
RULES
Uniform Criteria for State Observational Surveys of Seat Belt Use, 18042–18059

National Institute of Standards and Technology
NOTICES
Meetings:
Advisory Committee on Earthquake Hazards Reduction, 18165–18166
Technology Innovation Program Advisory Board, 18166–18167

National Institutes of Health
NOTICES
Best Pharmaceuticals for Children Act:
Priority List of Needs in Pediatric Therapeutics, 18228–18229
Meetings:
Center for Scientific Review, 18229–18230
National Institute of Allergy and Infectious Diseases, 18230
National Institute of Neurological Disorders and Stroke, 18230–18231

National Oceanic and Atmospheric Administration
NOTICES
Takes of Marine Mammals Incidental to Specified Activities:
Marine Geophysical Survey in Central Gulf of Alaska, June, 2011, 18167–18188

Nuclear Regulatory Commission
NOTICES
Facility License Renewals:
University of Wisconsin, 18261–18262
Regulatory Guides; Availability, 18262

Office of Management and Budget
See Management and Budget Office

Pension Benefit Guaranty Corporation
PROPOSED RULES
Reducing Regulatory Burden; Review Under E.O. 13563, 18134–18136

Personnel Management Office
NOTICES
January 2011 Pay Schedules, 18262–18263
Meetings:
Hispanic Council on Federal Employment, 18263

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18263–18265
Applications:
Fairholme VP Series Fund, Inc. and Fairholme Capital Management LLC, 18265–18274
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 18280–18283
NASDAQ OMX PHLX LLC, 18274–18276
New York Stock Exchange LLC, 18278–18280, 18285–18287
NYSE Amex LLC, 18276–18278, 18283–18285

Small Business Administration
RULES
Intermediary Lending Pilot Program, 18007–18020
NOTICES
Disaster Declarations:
Indiana, 18287
Missouri, 18289
New York, 18289
Ohio, 18288
Oregon, 18288
Tennessee, 18288
Major Disaster Declarations:
New Mexico, 18289–18290

Washington, 18290

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18290–18291

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition Determinations:
Boris Mikhailov; Case History, 18291–18292
The Steins Collect; Matisse, Picasso, and the Parisian Avant-Garde, 18292
Meetings:
International Telecommunication Advisory Committee, 18292

Susquehanna River Basin Commission
NOTICES
Actions Taken at March 10, 2011, Meeting, 18292–18293

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration

Treasury Department
See Fiscal Service
See Internal Revenue Service
PROPOSED RULES
Interest on Untimely Paid Vessel Repair Duties, 18132–18134

U.S. Customs and Border Protection
PROPOSED RULES
Interest on Untimely Paid Vessel Repair Duties, 18132–18134

Separate Parts In This Issue

Part II
Defense Department, 18304–18324
General Services Administration, 18304–18324
National Aeronautics and Space Administration, 18304–18324

Part III
General Services Administration, 18326–18345

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Proposed Rules:
Ch. XLII.....18104

7 CFR
946.....18001
989.....18003

10 CFR
Proposed Rules:
430.....18105
431.....18127

13 CFR
109.....18007

14 CFR
39 (7 documents) 18020, 18022, 18024, 18029, 18031, 18033, 18038
71 (2 documents) 18040, 18041
Proposed Rules:
33.....18130

19 CFR
Proposed Rules:
4.....18132
24.....18132

20 CFR
Proposed Rules:
Ch. IV.....18104
Ch. V.....18104
Ch. VI.....18104
Ch. VII.....18104
Ch. IX.....18104

23 CFR
1340.....18042

26 CFR
301.....18059
Proposed Rules:
301.....18134

29 CFR
Proposed Rules:
Ch. XL.....18134
Subtitle A 18104
Ch. II 18104
Ch. IV.....18104
Ch. V.....18104
Ch. XVII 18104
Ch. XXV.....18104

30 CFR
Proposed Rules:
Ch. I 18104

31 CFR
306.....18062
356.....18062
357.....18062
363.....18062

40 CFR
63.....18064
80.....18066
300.....18066
Proposed Rules:
300.....18136

41 CFR
300.....18326
302.....18326
Proposed Rules:
Ch. 50 18104
Ch. 60 18104
Ch. 61 18104

47 CFR
Proposed Rules:
1.....18137

48 CFR
Ch. 1 18304
1.....18324
2.....18304
4.....18304
6.....18304
13.....18304
14.....18304
15.....18304
18.....18304
19.....18304
26.....18304
33.....18304
36.....18304
42.....18304
52.....18304
53 (3 documents) 18072, 18304, 18322
Proposed Rules:
Ch. 29 18104

49 CFR
40.....18072
213.....18073

50 CFR
17.....18087
Proposed Rules:
17.....18138

Rules and Regulations

Federal Register
Vol. 76, No. 63
Friday, April 1, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS–FV–11–0012; FV11–946–2 IR]

Irish Potatoes Grown in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the State of Washington Potato Committee (Committee) for the 2011–2012 and subsequent fiscal periods from $0.0035 to $0.003 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in Washington. Assessments upon Washington potato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective April 2, 2011. Comments received by May 31, 2011, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938; or *Internet: http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary D. Olson, 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: Teresa.Hutchinson@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 rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, 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, Washington potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 2011, and continue until amended, suspended, or terminated.

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. Such 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.

This rule decreases the assessment rate established for the Committee for the 2011–2012 and subsequent fiscal periods from $0.0035 to $0.003 per hundredweight of potatoes handled.

The Washington potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–2006 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on January 26, 2011, and unanimously recommended 2011–2012 expenditures of $40,050 and an assessment rate of $0.003 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $39,950. The assessment rate of $0.003 is $0.0005 lower than the rate currently in effect. This action will allow the Committee to reduce its financial reserve while still

providing adequate funding to meet program expenses.

The major expenditures recommended by the Committee for the 2011–2012 fiscal period include $20,000 for surveillance inspection (compliance activity), $4,800 for a management agreement with the Washington State Potato Commission, $3,000 for committee expenses, and $3,000 for office expenses. These budgeted expenses are the same as those approved for the 2010–2011 fiscal period.

The assessment rate recommended by the Committee was derived by multiplying anticipated shipments of Washington potatoes by various assessment rates. Applying the $0.003 per hundredweight assessment rate to the Committee's 10,000,000 hundredweight crop estimate should provide $30,000 in assessment income. Thus, income derived from handler assessments and interest ($500) plus $9,550 from the Committee's monetary reserve would be adequate to cover the recommended $40,050 budget for 2011–2012. Funds in the reserve were $68,213 as of June 30, 2010. The Committee estimates that $4,450 will be deducted from the reserve to cover budgeted expenses for 2010–2011. Thus, the Committee estimates a reserve of $63,763 on June 30, 2011, which would be within the maximum permitted by the order of approximately two fiscal period's operational expenses (§ 946.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2011–2012 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial 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 rule on small entities. Accordingly, AMS has prepared this initial 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 the 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 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (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.

During the 2009–2010 marketing year, the Committee reports that 9,765,131 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than $7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2010 was $7.55 per hundredweight. The average gross annual revenue for the 267 Washington potato producers is therefore calculated to be approximately $276,130. In view of the foregoing, the majority of Washington potato producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2011–2012 and subsequent fiscal periods from $0.0035 to $0.003 per hundredweight of potatoes. The Committee unanimously recommended 2011–2012 expenditures of $40,050 and an assessment rate of $0.003 per hundredweight. The assessment rate of $0.003 is $0.0005 lower than the previous rate. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

The quantity of assessable potatoes for the 2011–2012 fiscal period is estimated at 10,000,000 hundredweight. Thus, the $0.003 rate should provide $30,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2011–2012 year include $20,000 for surveillance inspection (compliance activity), $4,800 for a management agreement with the Washington State Potato Commission, $3,000 for committee expense, and $3,000 for office expense. These budgeted expenses are the same as those approved for the 2010–2011 fiscal period.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Lower assessment rates were considered, but not recommended because they would reduce the financial reserve more than desired.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2011–2012 fiscal period could range between $7.40 and $7.55 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 2011–2012 fiscal period as a percentage of total grower revenue could range between 0.0405 and 0.0397 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 26, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements

on either small or large Washington potato 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.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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/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 material 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2011–2012 fiscal period begins on July 1, 2011, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable potatoes beginning with the 2011–2012 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 946.248 is revised to read as follows:

§ 946.248 Assessment rate.

On and after July 1, 2011, an assessment rate of $0.003 per hundredweight is established for Washington potatoes.

Dated: March 28, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–7753 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–FV–10–0090; FV10–989–3 FR]

Raisins Produced From Grapes Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Raisin Administrative Committee (committee) for the 2010–11 and subsequent crop years from $7.50 to $14.00 per ton of free tonnage raisins acquired by handlers and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The committee locally administers the marketing order which regulates the handling of California raisins produced from grapes grown in California. Assessments upon raisin handlers are used by the committee to fund reasonable and necessary expenses of the program. The 2010–11 crop year began August 1 and ends July 31. No volume regulation will be implemented for the 2010–11 crop year, and no reserve pool will be established for this crop. Some committee expenses usually covered by reserve pool revenues must therefore be covered by handler assessments, necessitating an increased assessment rate. The $14.00 per ton assessment would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* April 2, 2011.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Terry.Vawter@ams.usda.gov* or *Kurt.Kimmel@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 rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, 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, California raisin handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable raisins beginning on August 1, 2010, and continue until amended, suspended, or terminated.

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. Such 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.

This rule increases the assessment rate established by the committee for the 2010–11 and subsequent crop years from $7.50 to $14.00 per ton of free tonnage California raisins acquired by handlers and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets.

Sections 989.79 and 989.80, respectively, of the order provide authority for the committee, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California raisins. They are familiar with the committee's needs and with costs for goods and services in their local area, and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Section 989.79 also provides authority for the committee to formulate an annual budget of expenses likely to be incurred during the crop year in connection with reserve raisins held for the account of the committee. A certain percentage of each year's raisin crop may be held in a reserve pool during years when volume regulation is implemented to help stabilize raisin supplies and prices. The remaining "free" percentage may be sold by handlers to any market. Reserve raisins are disposed of through various programs authorized under the order. Reserve pool expenses are deducted from proceeds obtained from the sale of reserve raisins, as are costs to cover the Export Replacement Offer (ERO) program, which supports handler exports in various foreign markets. Net proceeds are returned to the pool's equity holders, primarily producers.

The Committee Formulates Two Budgets Initially

Prior to each crop year, the committee formulates two distinct budgets: One which envisions volume regulation during the upcoming season, and another which does not. This is a practical contingency plan, since the crop year begins prior to the committee's consideration of a recommendation for volume regulation, which cannot be made before the crop's size can be estimated.

When volume regulation is recommended, the committee adopts an administrative budget funded by handler assessments, and a reserve pool budget funded by the current year's reserve pool. Thus, some committee costs, some variable and some fixed, may be shared by the two revenue sources or allocated to one or the other. Variable costs solely attributed to the reserve budget include such expenses as insurance policies for committee-owned raisin bins and on stacks of reserve raisins, and reserve raisin hauling costs. Variable costs which are attributable solely to the administrative budget include such expenses as costs for committee and staff travel, or software and programming costs, etc. Because of the nature of these variable expenses, they can be changed or redirected without significant impact on either budget, if necessary.

On the other hand, fixed costs are less flexible, and, thus, cannot be readily changed from one accounting period to another. Because these are "sunk" costs, like rent, salaries and other related personnel costs, utilities, etc., they may be attributable to both the reserve and the administrative budget, depending on the nature of the expense. In the short term of one crop year, these fixed costs generally remain fixed costs.

When volume regulation is not implemented, the committee funds program operations with an administrative budget funded only from handler assessments. Some expenses associated with a reserve pool are eliminated or reduced from the combined administrative and reserve program budget.

The Committee Recommended Two Budgets Initially

The committee initially met on July 22, 2010, and recommended two 2010–11 crop year budget scenarios to accommodate both situations, because it was not known at that time whether volume regulation would be implemented.

The first budget scenario recommended was premised on the assumption that volume regulation would be implemented. Under this scenario, the committee recommended an administrative budget of expenses totaling $2,245,900, and a reserve pool budget of expenses totaling $2,530,700. The assessment rate would remain unchanged at $7.50 per ton. The assessment rate applied to the estimated acquisitions of raisins by handlers of 330,640 tons would provide adequate revenue to fund the shared administrative and reserve budgets (salaries, administrative expenses, research, compliance activities, industry outreach), and those costs exclusively funded by the reserve budget, including bin repair and maintenance. Total expenses of this budget scenario equal $4,776,600, not including $233,900 set aside as a contingency for unforeseen obligations, bringing the total budget to $5,010,500.

The second budget scenario recommended was based on the premise that volume regulation would not be implemented for the 2010–11 season. Under this scenario, various expenses typically split between the reserve pool budget and the administrative budget would be funded by the administrative budget because the activities continue, even in the absence of a reserve program. These expenses include salaries, bin maintenance costs, export consultants hired to assist the committee in administering USDA's Market Access Program (MAP) funds, etc. However, it should be noted that even some fixed costs would be subject to reduction or elimination if no reserve program were in place after the 2010–2011 crop year. In the long term, even fixed costs become variable costs.

In addition, some expense categories would be eliminated in the absence of a reserve program. These expenses include: Insurance for bins and reserve raisins, reserve raisin hauling, and the Industry Marketing Promotion Fund (IMPF).

Other expenses which have been reduced include: travel for committee and staff members, software and programming costs, and generic marketing efforts in foreign countries.

The administrative budget expenses total $4,423,500 not including a smaller contingency fund of $205,460, bringing the total administrative budget to $4,628,960; necessitating a higher assessment rate of $14.00 per ton to cover the estimated expenses, as unanimously recommended by the committee.

Committee Consideration of Volume Regulation

The committee met on October 5, 2010, and determined that volume regulation is not warranted for the 2010–11 crop year because the calculated volume regulation formula resulted in 100 percent free tonnage and zero percent reserve tonnage. Without volume regulation, the committee's relevant recommendation is the July 22, 2010, proposed administrative budget of $4,628,960, along with an increased assessment rate of $14.00 per ton.

In developing this budget, the committee reviewed and identified those expenses that were considered reasonable and necessary to continue operation of the raisin marketing order

program. As noted previously, several costs normally associated with administering a reserve pool would be eliminated such as insurance coverage ($98,700); raisin hauling costs ($65,000), and 2011–2012 export marketing promotion costs. These costs would be unnecessary in the absence of a reserve pool.

Some expenses traditionally split between the administrative and reserve pool budgets would be reduced and funded through the administrative budget. For example, total office and field staff travel related to reserve and administrative activities, budgeted at $66,200 ($33,100 allocated to the reserve budget and an additional $33,100 allocated to the administrative budget), would be reduced to $48,000. Other reduced expenses include: Reduction in costs for outside counsel approved by USDA for personnel issues from $8,000 to $6,000; travel for foreign committee representatives from $65,000 to $40,000; staff travel for generic foreign market relations from $70,000 to $40,000; and MAP trade activity from $440,000 to $400,000. In all, the committee has proposed eliminating or reducing expenses by a total of $353,100.

Other costs usually split between the reserve pool and administrative budgets that would be funded by the administrative budget include: Salaries and related employment costs, administration, generic marketing efforts, research, compliance activities, and industry outreach. These costs remain the same regardless of whether there is a reserve pool, as they are necessary to continue administration of the program.

The major expenditures recommended by the committee for the 2010–11 crop year include salaries and employee-related costs, administration costs, compliance activities, research and studies, and costs for operation and maintenance of the generic marketing programs.

The committee recommended $1,745,000 to cover salaries for all 18 committee employees, vacation accruals, payroll taxes, unemployment compensation, retirement contributions, employee benefits, employment costs, staff training and travel; insurance, and health insurance. Administrative expenses of $925,700 include expenses for rent, utilities, postage, office supplies, repairs and maintenance, memberships and subscriptions, committee training, consultants, audits, equipment leases and depreciation, committee and staff travel, committee mileage reimbursements, meeting expenses, bank charges, software and programming, and empty raisin bin hauling and maintenance. Costs for order compliance activities, not including compliance staff salaries, are anticipated to be $90,000; and research and studies, especially the cost for the five-year review of its marketing programs mandated by the Federal Agricultural Improvement and Reform (FAIR) Act of 1996, are anticipated to be $140,000. Costs for industry outreach are estimated to be $15,000. Costs for outside counsel approved by USDA for personnel issues are estimated to be $6,000. Generic costs for market maintenance and travel costs total $1,676,000, and include costs for foreign administration of MAP funds, travel for industry representatives in foreign countries—not including Mexico or Canada, which are considered part of the domestic market—and export consulting costs associated with MAP fund administration.

The $14.00 per ton assessment rate recommended by the committee was derived by dividing the $4,628,960 recommended budget ($4,423,500 anticipated expenses plus a contingency fund of $205,460) by an estimated 330,640 tons of assessable raisins. Sufficient income should be generated at the higher assessment rate for the committee to meet its anticipated and unanimously-recommended expenses. Due to a relatively small crop over which to spread the assessment rate, the recommended rate of $14.00 per ton is higher than recent assessment rates, and is enough to meet the anticipated expenses and maintain a small contingency fund. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The $14.00 per ton assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The committee's 2010–11 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA, in accordance with USDA's program oversight responsibilities.

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 rule 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 the 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 approximately 3,000 producers of California raisins and approximately 28 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000, and defines small agricultural service firms as those whose annual receipts are less than $7,000,000.

Based upon shipment data and other information provided by the committee, it may be concluded that a majority of producers and approximately 18 handlers of California raisins may be classified as small entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2010–11 and subsequent crop years from $7.50 to $14.00 per ton of assessable raisins acquired by handlers. The committee determined that volume regulation was not warranted for the 2010–11 crop year because the trade demand calculated under the order is currently higher than the crop estimate. Thus, given the current balance between supply and demand, the committee unanimously determined that volume regulation was not warranted for the 2010–2011 crop year.

When volume regulation is in effect, the committee establishes a budget allocated between administrative expenses funded by handler assessments, and expenses incurred in connection with a reserve pool, funded from the sale of reserve pool raisins for free tonnage use. As noted earlier, costs

which can be associated directly with the reserve pool, such as insurance on bins and reserve raisins, can readily be allocated to the reserve pool portion of the budget. Other costs, such as salaries or administrative expenses, represent expenditures which have been jointly allocated between the two portions of the budget, because these expenses and staff's time are shared between administrative and pool operations.

When no volume regulation is in effect during a crop year, there is no reserve pool budget for that crop year. However, as noted previously, the committee continues to incur fixed costs associated with salaries and administering the marketing order program, including expenses for their part of the MAP grant.

The committee reviewed and identified the expenses that would be reasonable and necessary to continue program operations without a reserve pool in effect during the 2010–11 crop year. As illustrated earlier, some expenses that are typically split between the administrative and reserve pool budgets have been allocated to the administrative budget, some expenses were reduced, and some expenses have been eliminated.

Each reserve pool maintains a separate identity from any other pools which may be in existence. For example, currently the 2008–09 and 2009–10 pools are still open, largely due to the lag time between the opening of the pool and the receipt of all documents applicable to that pool. Under the MIP/IMPF programs, for example, importers have two years in which to claim financial incentives from the pools. Thus, reserve pools cannot close until at least two years have elapsed.

The resulting recommended administrative budget includes expenses of $4,423,500 and a contingency fund of $205,460, for a total budget of $4,628,960 for the 2010–11 crop year. This represents an overall decrease from the 2009–10 combined administrative and reserve pool budgets, which totaled $5,463,975. The contingency fund provides a safety net to cover unexpected expenses and opportunities that present themselves during the 2010–2011 crop year.

The quantity of assessable raisins for 2010–11 crop year is estimated to be 330,640 tons. The $14.00 per ton assessment rate unanimously recommended by the committee was derived by dividing the $4,628,960 anticipated expenses, which includes a contingency fund of $205,460, by an estimated 330,640 tons of assessable raisins. Sufficient income should be generated at the higher assessment rate for the committee to meet its anticipated expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive, Audit, and Administrative Issues Subcommittees. Alternate spending levels were discussed by the Audit Subcommittee, which met on July 22, 2010, to review the committee's financial condition and consider preliminary budgets. The committee was aware that the current raisin supply and demand were relatively balanced, and that volume regulations might not be warranted for the 2010–11 crop. Therefore, the committee developed two alternative budget and assessment rate recommendations to accommodate a scenario with volume regulation and another scenario without volume regulation. If volume regulation were to be implemented, the assessment rate would remain at $7.50 per ton. If volume regulation were not to be implemented, some costs typically allocated to a reserve pool budget would be absorbed by the administrative budget, thus necessitating an increased assessment rate to $14.00 per ton. The committee unanimously approved these alternative budget and assessment recommendations on July 22, 2010.

The committee met again on October 5, 2010, and determined that volume regulation was not warranted for the 2010–11 season. This triggered recommendation of the committee's proposal for an administrative budget of $4,628,960 and an assessment rate of $14.00 per ton, since the current assessment rate of $7.50 would not provide enough funds to cover anticipated expenses of $4,423,500.

A review of statistical data on the California raisin industry indicates that assessment revenue has consistently been less than one percent of grower revenue in recent years. A minimum grower price of $1,500 per ton of raisins for the 2010–11 crop year has been announced by the Raisin Bargaining Association. If this price is realized, assessment revenue would continue to represent less than one percent of grower revenue in the 2010–11 crop year, even with the increased assessment rate.

Regarding the impact of this action on affected entities, this action increases the assessment obligation imposed on handlers. While increased assessments impose additional costs on handlers regulated under the order, the rates are uniform on all handlers, and proportional to the size of their businesses. However, these costs would be offset by the benefits derived by the operation of the marketing order.

In addition, the Audit Subcommittee and the full committee's meetings were widely publicized throughout the California raisin industry and all interested persons were invited to attend the meetings and encouraged to participate in committee deliberations on all issues. Like all subcommittee and committee meetings, the July 22 and October 5, 2010, meetings were public meetings, and all entities, both large and small, were able to express views on this issue, if they chose to do so. Based upon the discussions and the unanimous vote by the committee, the increased assessment is reasonable and necessary to maintain the program.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California raisin 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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.

A proposed rule concerning this action was published in the **Federal Register** on January 25, 2011 (76 FR 4254). Copies of the proposed rule were provided to all raisin handlers by the committee. Finally, the proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period, ending February 4, 2011, was provided for interested persons to respond to the proposal.

There were three comments on the proposed rule from raisin handlers and one from the general public. One handler commenter simply noted that he was opposed to the assessment rate increase.

Another handler commenter noted that when the proposed budget was recommended, the committee believed there would be insufficient funds remaining in the existing reserve pool. This belief necessitated the increased assessment rate. However, as recently as January 6, 2011, estimates of funds in the reserve pool indicated that pool

funds were more than adequate. For that reason, the requester suggested that the increased assessment rate has become unnecessary.

The third handler commenter also suggested that the proposed assessment rate of $14.00 per ton was higher than necessary and offered a counter proposal of $8.25 per ton.

At the time the committee made the recommendation for an increased assessment rate, they submitted a budget of expenses contingent upon the proposed assessment rate. If new information since that recommendation resulted in the need for a revised budget and accompanying assessment rate, the committee may recommend and submit a new budget and revised assessment rate for the Secretary's review. In fact, the committee may provide a new budget and assessment recommendation any time conditions affecting the budget and assessment rate change enough to warrant a new recommendation. In the absence of an alternative recommendation from the committee regarding a revised budget and assessment rate proposal, the USDA has determined that issuing this final rule as recommended by the committee is appropriate.

In addition, it should be noted that the marketing order provides a remedy in § 989.81(a) in the event the committee collects more assessment funds than are needed in a crop year: A handler may be credited his share of excess assessments collected against operations of the following crop year, or the handler may request a refund of such excess assessments. Moreover, the proposed budget and the accompanying increased assessment rate were unanimously approved at the July 22, 2010, and October 5, 2010, committee meetings. Representatives of all three handler commenters attended at least one of the meetings and added their vote to the unanimous recommendations.

The fourth comment was from a member of the public, who stated that assessment rates against raisin producers should be reduced rather than nearly doubled. First, the assessment is collected from handlers, rather than producers. Also, as noted previously, the members of the committee are producers and handlers of California raisins. They are familiar with the committee's needs and with costs for goods and services in their local area, and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting in the production area, and therefore, all directly affected persons have an opportunity and are encouraged to participate and provide input. Finally, the producers and handlers who comprise the committee made their recommendation to increase the assessment rate by unanimous vote.

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/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 material 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exits for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2010–11 crop year raisins and the assessment rate applies to all raisins received during the crop year and subsequent crop years. In addition, the committee needs the additional revenue generated by this assessment rate to meet its financial obligations for this crop year. Further, handlers are aware of this rule, which was unanimously recommended at a public meeting. Also, a 10-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.347 is revised to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2010, an assessment rate of $14.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: March 28, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–7759 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 109

[Docket No. SBA–2011–0002]

RIN 3245–AG18

Intermediary Lending Pilot Program

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements section 1131 of the Small Business Jobs Act of 2010, which requires SBA to establish an Intermediary Lending Pilot (ILP) program. The ILP program is a three-year pilot program in which SBA will make direct loans of up to $1 million at an interest rate of 1 percent to up to 20 nonprofit lending intermediaries each year, subject to availability of funds. Intermediaries will then use the ILP loan funds to make loans of up to $200,000 to startup, newly established, or growing small business concerns.

DATES: *Effective date:* April 1, 2011.

Comment date: Comments must be received on or before May 31, 2011.

ADDRESSES: You may submit comments, identified by docket number [SBA–2011–0002] by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.
- Hand Delivery/Courier: Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.

All comments will be posted on *www.Regulations.gov.* If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *www.Regulations.gov* and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Grady Hedgespeth, Director of Financial

Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its sole discretion, of whether the information is CBI and, therefore, will be published or not.

FOR FURTHER INFORMATION CONTACT: Grady Hedgespeth, Director of Financial Assistance, at (202) 205–7562 or *Grady.Hedgespeth@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 1131 of the Small Business Jobs Act of 2010, Public Law 111–240, enacted September 27, 2010 (the Act), requires SBA to implement a three year Intermediary Lending Pilot (ILP) program. Under the ILP program, SBA will provide loans to selected nonprofit intermediaries for the purpose of providing loans to small businesses. Eligible intermediaries, which include private, nonprofit community development corporations, must have at least one year of experience making loans to startup, newly established, or growing small businesses. SBA will use a competitive selection process to select ILP Intermediaries to participate in the program and will make ILP Loans of up to $1 million to no more than 20 in each of fiscal years 2011, 2012, and 2013 (depending on availability of funds). ILP Loans have a 20 year term and an interest rate of 1%, with the first payment deferred for two years from the date of the first disbursement. SBA collects no fees on the loan and requires no collateral. An ILP Intermediary must use the ILP Loan proceeds to make loans of up to $200,000 to startup, newly established, or growing small businesses. An ILP Intermediary will deposit the principal portion of all payments received on loans made to small businesses under the program into an ILP Relending Fund; the ILP Intermediary will then be required to lend 100% of the ILP Loan proceeds within two years of the date of the ILP Note. In addition, the ILP Intermediary will be required to continue making loans to small businesses from the ILP Relending Fund for as long as its loan from SBA remains outstanding.

In order to implement this new loan program, SBA is adding a new part 109 to the Agency's regulations. Many provisions, such as ILP Intermediary reporting requirements, fees charged to small business borrowers, and restrictions on types of businesses eligible to receive loans under the ILP program, are based on existing requirements in SBA's other business loan programs under Part 120 of SBA's regulations.

II. Section by Section Analysis

Sections 109.10 and *109.20* describe the ILP program and define the terms used in Part 109. The definitions for Affiliate, Associate, Close Relative, ILP Program Requirements, and Native American Tribal Government are based on similar or identical terms used in other SBA programs. In addition, the definitions for the various reports (ILP Program Activities Report, Portfolio Identification Report, and Portfolio Status Report) and the Intermediary Lending Program Electronic Reporting System (ILPERS) are based on similar reports used in SBA's Microloan program. The remaining definitions describe terms unique to the ILP program.

Sections 109.100 through *109.220* describe the qualifications for the ILP program, the application process, and the evaluation and selection of ILP Intermediaries. Section 109.100 sets forth the eligibility and continuing participation requirements for ILP Intermediaries. An applicant must meet these requirements in order to be eligible to become an ILP Intermediary and, if selected, must maintain compliance with these requirements. Under the Act, an applicant must be a private, nonprofit entity with not less than one year of experience making loans to startup, newly established, or growing small businesses to be eligible to become an ILP Intermediary. At time of application, the applicant must have a minimum of one year of internal experience making loans to startup, newly established, or growing small businesses. The applicant must have directly funded the loans and not simply provided referrals to, or guarantees against, loans made by another entity. If an applicant is made up of a consortium of organizations, each member of the consortium must be individually eligible or the entire consortium will be considered not eligible. The Act further defines an eligible private, nonprofit entity to include a private, nonprofit community development corporation, a consortium of private, nonprofit organizations or community development corporations, and an agency or nonprofit entity established by a Native American tribal government. Examples of nonprofit community development corporations include certified nonprofit Community Development Fund Institutions (CDFIs) participating in Treasury's CDFI Fund program and Certified Development Companies (CDCs) participating in SBA's 504 lending program. Intermediaries that currently participate in SBA's Microloan program, as described in subpart G of part 120, are not eligible to become ILP Intermediaries; however, affiliates of Microloan intermediaries may apply. SBA is requiring that a Microloan intermediary establish an affiliate organization (or use an existing affiliate organization) for participation in the ILP program in order to maintain separation between SBA program funds and activities, as well as to facilitate adequate and proper oversight of both programs. The Act requires that applicants to the ILP Intermediary program have at least one year of experience making loans to startup, newly established, or growing small businesses. Therefore, newly established affiliates will not be eligible to apply for the ILP program for fiscal year 2011; however, such affiliates may apply for the second round of ILP Intermediary selections in fiscal year 2012 after they have established the one year of required lending experience.

Paragraph (c) of *section 109.100* includes additional requirements relating to an ILP Intermediary's management and operations. SBA modeled these requirements on existing lender participation requirements in its guaranteed loan programs.

Section 109.200 describes the ILP Intermediary application process. There is a limited amount of funds available to make loans to ILP Intermediaries; therefore SBA will run a competition to select the most qualified applicants to become ILP Intermediaries and receive an ILP Loan of up to $1,000,000. SBA has authority to make ILP Loans to no more than 20 ILP Intermediaries in each of fiscal years 2011, 2012, and 2013, for a maximum total of 60 ILP Intermediaries. SBA will select 20 ILP Intermediaries through a competitive application process in fiscal year 2011 and another 20 ILP Intermediaries through a second competitive application round in fiscal year 2012, for a total of 40 ILP Intermediaries. SBA currently has funding to make ILP Loans only in fiscal years 2011, and 2012. If additional funds are appropriated for the ILP program, SBA will select another 20 ILP Intermediaries in fiscal 2013 for a total of 60 ILP Intermediaries.

As stated in § 109.200(a), SBA will publish a Notice of Funds Availability (NOFA) in the **Federal Register** to advise potential applicants of when they may begin submitting applications to become an ILP Intermediary. SBA will only accept applications during the

specific application period set forth in the NOFA. *Section 109.200(b)* lists the contents of the ILP Intermediary application. As required by the Act, an applicant must describe the type of small businesses it will assist; the size and range of loans it will make; the interest rate and terms of the loans it will make; the geographic area to be served and the economic, poverty, and unemployment characteristics of the area; and the status of small businesses in the area to be served and an analysis of the availability of credit. SBA will provide further details regarding the contents of the application in the NOFA.

Section 109.210 describes the evaluation and selection of ILP Intermediaries by SBA. SBA will consider only completed applications. Each complete application will be evaluated and scored based on the criteria stated in the NOFA. In general, eligible applications with the highest scores will be granted ILP Intermediary status. SBA reserves the right to select less than the maximum authorized number of ILP Intermediaries and to select ILP Intermediaries in such a way as to diversify geographic areas served. By allowing geographic diversity to serve as a possible selection criterion, SBA hopes to expand the impact of the ILP program.

As required by the Act, *Section 109.220* provides that no ILP Intermediary (including affiliates) may receive more than $1,000,000 in ILP Loans. Although SBA has authority to make ILP Loans of less than $1 million, SBA anticipates making ILP Loans of $1 million to each ILP Intermediary in order to fully utilize all available loan funds. Each ILP Intermediary will only be eligible to receive one ILP Loan.

Sections 109.300 through *109.360* describe the requirements of the ILP program. As stated in Section 109.300, an ILP Intermediary must maintain compliance with ILP Program Requirements until it has repaid its ILP Loan to SBA. In addition, ILP Intermediaries are subject to certain provisions in 13 CFR Part 120 that are applicable to all lenders that participate in SBA loan programs: Section 120.140, *What ethical requirements apply to participants?,* describes the ethical requirements of lenders participating in SBA programs and any associates of such lenders; § 120.197, *Notifying SBA's Office of Inspector General of suspected fraud,* requires lenders to notify the SBA Office of Inspector General of any information which indicates that fraud may have occurred in connection with a loan made under the ILP program; § 120.412, *Other services Lenders may provide Borrowers,* provides that lenders and associates of lenders may provide services to and contract for goods with a borrower only after full disbursement of the loan, and § 120.413, *Advertisement of relationship with SBA,* describes how a lender may refer to SBA in its advertising.

Section 109.310 provides the terms of SBA's ILP Loan to an ILP Intermediary. An ILP Loan must be fully repaid within 20 years from the date of the ILP Note. An ILP Intermediary may draw down ILP Loan funds as needed to fund loans to Eligible Small Business Concerns. SBA may place restrictions on disbursement, including the amount that may be disbursed to an ILP Intermediary at one time or conditions on subsequent disbursements. If SBA, in its sole discretion, finds that an ILP Intermediary is not complying with ILP Program Requirements, it may withhold any remaining disbursements of the ILP Loan until the ILP Intermediary comes into compliance.

Sections 109.310 (c) and (d) provide that the interest rate on an ILP Loan will be fixed at 1%, and that payments of principal and interest must be made to SBA on a quarterly basis. SBA will defer the first payment on an ILP Loan for two years from the date of the first disbursement of ILP Loan proceeds, as required by the Act. Interest will accrue on all disbursed funds during the deferment period. Accrued interest will be added to the outstanding principal balance at the end of the deferment period and amortized over the remaining life of the loan. An ILP Intermediary may prepay an ILP Loan at any time without penalty. As required by the Act and set forth in § 109.310(e) and (f), SBA will not require an ILP Intermediary to provide any collateral for an ILP loan, nor will SBA charge an ILP Intermediary any fees.

Section 109.320 states that ILP Loan funds must only be used to provide direct loans to Eligible Small Business Concerns. An ILP Intermediary may not use ILP Loan funds for any other purpose, including maintenance of loan loss reserves or payment of administrative costs or expenses. SBA believes that these restrictions are appropriate in order to maximize the funds available for loans to Eligible Small Business Concerns. An ILP Intermediary may recoup the costs of making and servicing loans under this program from the interest spread between its ILP Loan and the loans to Eligible Small Business Concerns and from reasonable fees, as described in § 109.420(e).

Section 109.330 provides that an ILP Intermediary must establish an ILP Relending Fund in an account separate and distinct from its other assets and financial activities, and maintain it for as long as its ILP Loan from SBA is outstanding. All ILP Loan funds disbursed from SBA to the ILP Intermediary must be deposited into the ILP Relending Fund, as well as all payments received from Eligible Small Business Concerns on loans made under this program. SBA does not require the ILP Intermediary to retain the interest portions of payments received from Eligible Small Business Concerns in the ILP Relending Fund. The ILP Intermediary must not commingle funds from any other public programs in this account. An ILP Intermediary must use the ILP Relending Fund to disburse loans made to Eligible Small Business Concerns under this program and to make payments to SBA on its ILP Loan, and may not use the ILP Relending Fund for any other purpose.

Section 109.340 sets forth SBA's lending requirements for ILP Loan funds. In paragraph (a), SBA requires that an ILP Intermediary commit 100% of its ILP Loan funds to Eligible Small Business Concerns within two years of the date of the ILP Note, unless it receives an extension from the Associate Administrator of Capital Access (AA/CA) or designee. SBA designed this requirement to prevent ILP Loans from remaining idle for extended periods of time, while also allowing an ILP Intermediary sufficient time to relend its ILP Loan funds in a prudent manner.

After meeting the initial lending requirement, the ILP Intermediary must relend the funds in its ILP Relending Fund so that the total principal balance of loans outstanding to Eligible Small Business Concerns does not fall below 75% of the outstanding principal balance of the ILP Loan at any time. SBA based this relending model on current practices of intermediaries participating in similar programs, such as SBA's Microloan program and USDA's Intermediary Relending Program, which are referenced in the Act's legislative history as bases for the ILP program. Requiring ILP Intermediaries to relend ILP Loan funds maximizes the impact of the ILP program, and is consistent with statutory intent. SBA anticipates that an ILP Intermediary will relend its ILP Loan proceeds approximately 2.5 times over the 20 year term.

Section 109.350 provides that the ILP Intermediary must maintain a reasonable loan loss reserve appropriate for the quality of the ILP Intermediary's portfolio in a federally insured depository account established by the ILP Intermediary at a well-capitalized

financial institution. The loan loss reserve must be in an account separate and distinct from the ILP Intermediary's other assets and financial activities. The loss reserve may be established using the ILP Intermediary's own funds, interest income from loans made to Eligible Small Business Concerns, or proceeds from the application or origination fees described in § 109.420(e). ILP Relending Fund proceeds may not be used to establish the loss reserve. In order to provide some protection against default, SBA will require an ILP Intermediary to maintain the loss reserve at not less than 5% of the principal balance of all outstanding loans to Eligible Small Business Concerns made from the ILP Relending Fund. The 5% requirement is intended as a floor. SBA recognizes that the appropriate level of reserves will vary depending on the ILP Intermediary's portfolio and current economic conditions; therefore SBA will allow ILP Intermediaries to determine their appropriate individual levels of reserves above the required 5%. If the AA/CA or designee determines that an ILP Intermediary's loss reserve level is potentially inadequate to protect SBA from loss, the AA/CA or designee may require the ILP Intermediary to maintain a larger loss reserve.

Section 109.360 details the recordkeeping and reporting requirements for the ILP program. Section 109.360(a) states that the ILP Intermediary must maintain accurate and current financial records and all documents and supporting materials relating to the ILP Intermediary's activities in the ILP program. Section 109.360(b) lists the required reports the ILP Intermediary must submit: (1) Portfolio Identification Reports containing information on each loan made to Eligible Small Business Concerns that must be submitted within seven days of closing a loan; (2) quarterly Portfolio Status Reports that update payment and balance information on the ILP Intermediary's ILP portfolio; (3) quarterly ILP Program Activities Reports (with accompanying bank statements) that demonstrate the use and management of ILP program funds; (4) audited financial statements; and (5) reports of any changes in the ILP Intermediary's organization or financing. SBA based these reporting requirements on the reports required in the Microloan program. The Portfolio Identification Reports and Portfolio Status Reports will be submitted electronically through SBA's web-based Intermediary Lending Program Electronic Reporting System (ILPERS). Annually, the ILP Intermediary must submit audited financial statements prepared by an independent certified public accountant, except that ILP Intermediaries that are subject to the Single Audit Act under OMB Circular A–133 must instead submit audits prepared in accordance with that circular. SBA will provide further guidance on the application of the Single Audit Act and OMB Circular A–133 in the procedural guidance developed to administer the ILP program. An ILP Intermediary must submit its audited financial statements (or A–133 audit, as applicable) within four months after the close of the ILP Intermediary's fiscal year. SBA based this requirement on existing requirements in the Microloan program. The AA/CA or designee may provide extensions to the filing deadline.

Sections 109.400 through *109.440* describe the requirements for the loans an ILP Intermediary makes to small businesses. Section 109.400 provides the requirements a borrower must meet in order to receive a loan from an ILP Intermediary under this program. By statute, an ILP Intermediary must provide loans to startup, newly established, or growing small business concerns. In addition to these statutory requirements, paragraph (a) includes basic eligibility requirements that SBA requires for all of its business loans: the business must be organized for profit and located in the United States; it must meet SBA size standards; it must not have credit available elsewhere; and it must be creditworthy and demonstrate reasonable assurance of repayment of the loan. The business must be a small business as defined under the size requirements applicable to 7(a) business loans. The ILP Intermediary must also document that the small business borrower does not have credit available elsewhere and that the borrower demonstrates reasonable assurance or repayment. SBA will provide further guidance on the credit elsewhere test and what is required to demonstrate repayment ability in the procedural guidance developed to administer the ILP program.

Paragraph (b), which lists the types of businesses that are not eligible for loans under the ILP program, is also based on the eligibility requirements applicable to SBA's existing business loan programs. (*See* 13 CFR 120.110)

The Act provides that the maximum amount of a loan from an ILP Intermediary to a small business is $200,000. SBA has interpreted this restriction in § 109.410 to mean that the total amount of all loans received by a small business under this program must not exceed $200,000 at any one time.

Section 109.420 describes the terms of a loan from an ILP Intermediary to an Eligible Small Business Concern. The term of a loan to an Eligible Small Business Concern must be the shortest appropriate term. The maximum loan term is 10 years, unless the loan finances or refinances real estate or equipment with a useful life exceeding ten years, in which case the maximum term is 25 years. SBA modeled these loan maturity limits on the terms used in SBA's 7(a) guaranteed loan program. The maximum rate will depend on the size of the loan: Loans less than or equal to $50,000 have a maximum interest rate of 8.75 percent; loans greater than $50,000 have a maximum interest rate of 7 percent.

SBA chose to differentiate between smaller and larger loan sizes because smaller loans generally carry more risk. SBA may adjust the maximum interest rates from time to time, and will publish any such change by Notice in the **Federal Register**. Changes to the maximum interest rate do not apply to loans made to Eligible Small Business Concerns prior to publication of the change in the **Federal Register**. SBA will publish these maximum rates in the **Federal Register** from time to time. Finally, paragraph (f) provides that an ILP Intermediary may not charge any fees on loans made under the program except for the reasonable direct costs of liquidation, necessary out-of-pocket expenses such as filing or recording fees, a late payment fee not to exceed 5 percent of the scheduled loan payment, and reasonable application and origination fees. The provisions on late payment fees, out-of-pocket expenses, and direct costs of liquidation are consistent with permissible fees in SBA's 7(a) guaranteed loan program. SBA decided to allow optional reasonable application and origination fees so that an ILP Intermediary may recoup some of its loan processing costs. The total amount of application and origination fees charged to an Eligible Small Business Concern must not exceed the maximum total fee cap, currently set at 1 percent of the amount of the loan to the Eligible Small Business Concern. SBA will publish a Notice in the **Federal Register** prior to implementing any changes to this fee cap.

Section 109.430 describes the eligible purposes for loans from ILP Intermediaries, as required by the Act. An Eligible Small Business Concern may only use the proceeds of a loan received under this program for working capital; real estate; and the acquisition of materials, supplies, furniture,

fixtures, or equipment. Loan proceeds must not be used to acquire real estate held primarily for sale, lease or investment. This restriction is consistent with SBA's policies against speculative uses of proceeds in its other business loan programs.

Section 109.440 describes requirements of ILP Intermediaries imposed under other laws and orders. These requirements apply government-wide to all programs that provide Federal financial assistance, and are applicable to all of SBA's loan programs. Section 120.170 (Flood insurance) states that a loan recipient must obtain flood insurance if any building, machinery, or equipment acquired, installed, improved, constructed, or renovated with the proceeds of SBA financial assistance is located in a special flood hazard area. ILP Intermediaries are responsible for notifying borrowers that flood insurance must be maintained. Section 120.172 (Flood-plain and wetlands management) details the steps an ILP Intermediary must follow if the location for which financial assistance is proposed is in a floodplain or wetland. Section 120.173 (Lead-based paint) states that if loan proceeds are for the construction or rehabilitation of a residential structure, lead-based paint may not be used on any interior surface, or on any exterior surface that is readily accessible to children under the age of seven. Section 120.173 (Earthquake hazards) provides that when loan proceeds are used to construct a new building or an addition to an existing building, the construction must conform with the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings. Finally, ILP Intermediaries must comply with the civil rights laws in parts 112, 113, 117, and 136 of this chapter prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age.

As required by the Act, section 109.450 provides that SBA will not review a loan made under this program prior to approval of the loan by the ILP Intermediary. An ILP Intermediary is responsible for all loan decisions regarding eligibility (including size). If SBA discovers that an ILP Intermediary has made a loan under this program to an ineligible business or for an ineligible purpose, SBA will require the ILP Intermediary to refinance the ineligible loan with non-ILP program funds and to deposit into its ILP Relending Fund an amount equal to the outstanding principal balance on the ineligible loan.

Section 109.460 provides that an ILP Intermediary may not sell all or any portion of a loan made to an Eligible Small Business Concern without prior written consent from the AA/CA or designee. SBA wants to prevent small business loans made under the ILP program from being sold to entities that have not been vetted and approved by SBA. SBA anticipates approving loan sales only in unusual circumstances.

Finally, *Sections 109.500* to *109.530* set forth SBA's oversight of ILP Intermediaries. Section 109.500 requires the ILP Intermediary to allow SBA access to its files to review, inspect, and copy all records and documents relating to loans made from the ILP Relending Fund or as requested for SBA oversight. *Section 109.510* states that SBA may conduct off-site reviews and monitoring of ILP Intermediaries and on-site reviews as needed. SBA may require an ILP Intermediary to take corrective actions to address findings from on-site or off-site reviews. Failure to take required corrective actions may constitute an event of default, as described in § 109.520(c). Any reports and other SBA prepared review related documents generated as a result of such reviews are subject to the confidentiality requirements of § 120.1060. These provisions are based on SBA's lender oversight regulations applicable to its other business loan programs. Reviews may include analysis of ILP Intermediaries' quarterly Portfolio Status Reports and ILP Program Activities Reports, annual audited financial statements, and loan information entered electronically into ILPERS. In addition, SBA may conduct on-site reviews of ILP Intermediaries at SBA's discretion. SBA may also review selected ILP loan files of those ILP Intermediaries that receive on-site reviews as part of their participation in other SBA programs (*e.g.,* SBA's 504 program) as a part of those reviews. Loans made under the ILP program will not affect a lender's risk rating in other SBA programs.

Section 109.520 describes events of default on an ILP Loan and SBA's remedies for an ILP Intermediary's noncompliance with ILP Program Requirements. This section provides three categories of events of default: automatic events of default, events of default with notice, and events of default with opportunity to cure. SBA based this provision on default provisions used in its Small Business Investment Company (SBIC) and New Markets Venture Capital (NMVC) programs. Finally, *§ 109.530* provides that SBA may debar or suspend an ILP Intermediary or any participant in the affairs of an ILP Intermediary's SBA operations in accordance with the government-wide nonprocurement debarment and suspension provisions in 2 CFR Parts 180 and 2700. SBA will provide further guidance on its oversight of ILP Intermediaries in the procedural guidance developed to administer the ILP program.

III. Justification for Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553 and SBA regulations at 13 CFR 101.108. The APA provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting prior public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without prior public participation. SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to help small businesses during this economic downturn and the short-term nature of the funding for this new pilot program. The ILP program will offer a significant opportunity for nonprofit intermediaries to provide loans to startup, newly established, or growing small businesses. In order to select the 20 most qualified participants for the ILP program, SBA must run a competition. Under current appropriations, SBA can provide loans to 20 ILP Intermediaries in each of fiscal years 2011 and 2012; however, the 2011 appropriations for the ILP program are only available for loans made in fiscal year 2011. Furthermore, SBA must run a competition to select the ILP Intermediaries that will receive loans in fiscal year 2011. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would probably delay the delivery of the ILP program until fiscal year 2012 and prevent the Agency from maximizing the funds available for loans in fiscal year 2011. In addition, the Act included a deadline to publish regulations by March 26, 2011. In order to meet this statutory deadline and to maximize the use of available program funds, SBA needs to implement this

program without advance solicitation of comments.

SBA invites comments from all interested members of the public. These comments must be received on or before the close of the comment period noted in the **DATES** section of this interim final rule. SBA may then consider these comments in making any necessary revisions to these regulations.

IV. Justification for Immediate Effective Date

The APA requires that "publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as * * * otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect.

Under current appropriations, SBA can provide loans to 20 ILP Intermediaries in each of fiscal years 2011 and 2012; however, the 2011 appropriations for the ILP program are only available for loans made in fiscal year 2011. As stated above, SBA must run a competition to select the most qualified applicants to become ILP Intermediaries and receive ILP Loans. An immediate effective date is necessary to ensure that there is sufficient time to select ILP Intermediaries and make ILP Loans before the end of this fiscal year; therefore, SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. While this rule is effective immediately upon publication, the SBA is inviting public comment on the rule during a 60-day period and will consider comments in developing a final rule.

Compliance With Executive Orders 12866, 12988, 13132, 13175, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule constitutes a "significant regulatory action" under Executive Order 12866, thus requiring a Regulatory Impact Analysis, as set forth below.

A. Regulatory Objective of the Proposal

Under the ILP program, SBA will provide direct loans of up to $1,000,000 to eligible nonprofit intermediaries. These direct loans will enable the nonprofit intermediaries to provide loans of up to $200,000 to startup, newly established, or growing small business concerns for working capital, real estate, or the acquisitions of materials, supplies, furniture, fixtures, or equipment. The ILP program addresses current financing gaps including the limited availability of commercial loans of $200,000 or less.

B. Benefits of the Rule

The Eligible Small Business Concerns that receive loans from ILP Intermediaries directly benefit from the ILP program. In monetary terms, these direct benefits total approximately $150 million, as described below. An ILP Intermediary must use the proceeds of an ILP Loan to make loans to Eligible Small Business Concerns, and must continue to relend the principal portion of payments received on those loans while the ILP Loan remains outstanding to SBA. SBA anticipates that each ILP Intermediary will relend its ILP Loan proceeds approximately 2.5 times before it has fully repaid its ILP Loan to SBA. SBA is authorized to make loans of $1 million to 20 ILP Intermediaries in each of fiscal years 2011, 2012, and 2013, subject to the availability of appropriations (current appropriations allow SBA to make $20 million in ILP Loans in each of fiscal years 2011 and 2012). Therefore, each ILP Intermediary will make approximately $2.5 million in loans to Eligible Small Business Concerns. Assuming that SBA receives the same funding for the ILP program in fiscal year 2013, SBA anticipates that the total benefit of the ILP program to Eligible Small Business Concerns will be approximately $150 million (60 ILP Intermediaries at $2.5 million in loans to Eligible Small Business Concerns per ILP Intermediary).

The ILP Intermediaries will also benefit from the ILP program because the favorable ILP Loan terms will enable an ILP Intermediary to participate in the ILP program at little to no cost to the ILP Intermediary. By statute, an ILP Loan has a 20 year term, no collateral, no fees, a 2 year payment deferral, and a 1% fixed interest rate. In addition, the regulations would permit ILP Intermediaries to charge Eligible Small Business Concerns a reasonable interest rate, application and origination fees and closing costs for loans made under the ILP program. SBA anticipates that most ILP Intermediaries will be able to fund the operations of their ILP programs through these fees and the interest spread on loans to Eligible Small Business Concerns.

C. Costs of the Rule

The bulk of the immediate costs of the ILP program are borne by the U.S. taxpayers due to the current subsidy appropriations of $8 million for fiscal years 2011 and 2012. Based on current subsidy models, however, SBA anticipates using only $6,115,129 in FY 2011 and $5,145,704 in FY 2012 to carry out the ILP program. In addition to the subsidy costs, the SBA and U.S. taxpayers will incur costs associated with launching and operating the ILP program, for which Congress has appropriated $6.5 million. The agency will use this funding for program development, implementation and support.

The small business borrowers that receive loans from ILP Intermediaries will have some costs associated with the loan. As stated above, the regulations would permit ILP Intermediaries to charge a reasonable interest rate, application fee, origination fee and closing costs for loans to Eligible Small Business Concerns. These fees are necessary to cover the ILP Intermediaries' administrative costs of running the ILP program. In addition, the regulations would allow ILP Intermediaries to charge the Eligible Small Business Concerns for direct costs of liquidation and a late payment fee of less than 5 percent of the scheduled loan payment. These fees safeguard the ILP Intermediary in the case of default or delinquency by an Eligible Small Business Concern.

Finally, ILP Intermediaries will incur some costs of administering this program. For instance, ILP Intermediaries must maintain the ability to administer, monitor, and service the small business loans through adequate staffing, capital, and other resources. Also, the regulations mandate certain reporting requirements: ILP Intermediaries must report each loan transaction in an electronic reporting system; submit quarterly reports; and annual audited financial statements. In addition, ILP Intermediaries will incur costs to maintain required loan loss reserves. The regulations would require ILP Intermediaries to maintain a loan loss reserve fund of not less than 5 percent of the principal balance of outstanding loans to Eligible Small Business Concerns under the program. While the loan loss reserve fund and reporting requirements represent a cost to ILP Intermediaries, SBA finds these costs necessary to facilitate the ILP program and to ensure prudent lending practices.

D. Alternatives

Given that the program is the result of a Congressional mandate, SBA had little leeway in providing alternatives for the basic programmatic structure. However, SBA did consider various alternative ways of implementing the specific statutory requirements. For example, SBA considered prohibiting loans to Eligible Small Business Concerns of less than $50,000 in order to avoid any risk of overlap with SBA's Microloan program, but decided that such a restriction would unduly restrict the ILP program and possibly lead to artificial inflation of loan amounts to meet program requirements. Furthermore, SBA plans to select ILP Intermediaries with demonstrated experience in making loans between $50,000 and $200,000; therefore, SBA anticipates that the majority of loans made to small businesses through the ILP program will exceed $50,000.

SBA also considered restricting the application and origination fees an ILP Intermediary can charge to a nominal amount. SBA decided that it will allow ILP Intermediaries to charge reasonable application and origination fees totaling up to 1% of the amount of the loan to the small business borrower in order to recoup some of the administrative costs associated with making loans under the ILP program. In addition, SBA considered requiring monthly payments on the ILP Loan and submission of monthly reports. However, SBA decided that while more frequent loan payments and reporting would benefit the agency, quarterly payments and reporting imposed a less stringent requirement for the ILP Intermediaries without adding much additional risk.

Having considered these alternatives, SBA believes that this rule is SBA's best available means for achieving its regulatory objective of implementing the ILP program and incorporating the provisions of the Small Business Jobs Act of 2010.

Executive Order 12988

For the purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is crafted, to the extent practicable, in accordance with the standards set forth in sections 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not have retroactive or pre-emptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13175

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with tribal officials in the development of Federal policies that have tribal implications. As defined in the order, policies that have tribal implications refers to regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

In these regulations, SBA has defined Native American Tribal Governments to include the governing body of any Native American tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans. This definition is based on the definition of "qualified Indian tribe" in the Small Business Act (15 U.S.C. 632), which is in turn based on the definition of "Indian tribe" in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

As set forth in section 1131 of the Act, the ILP program provides an opportunity for agencies of a Native American Tribal Government or nonprofit entities established by a Native American Tribal Government to apply to become ILP Intermediaries. SBA welcomes the opportunity to discuss the ILP program with the tribal and ANC communities during the public comment period.

Executive Orders 12866 and 13563

A description of the need for this regulatory action and benefits and costs associated with this action is included above in the Regulatory Impact Analysis under Executive Order 12866.

As further described above, SBA needs to implement this program without advance solicitation of comments in order to maximize the use of available program funds. Under current appropriations, SBA can provide loans to 20 ILP Intermediaries in each of fiscal years 2011 and 2012; however, the 2011 appropriations for the ILP program are only available for loans made in fiscal year 2011.

The requirements imposed on ILP Intermediaries are designed to maximize net benefits of the ILP program. In order to minimize the burdens on the ILP Intermediaries while also ensuring protection of taxpayer dollars, SBA compared requirements in similar programs (such as SBA's Microloan program and USDA's Intermediary Relending Program) and conducted market research. For example, SBA sought information from several non-profit lenders currently participating in similar lending programs regarding their average loss reserve rates and their experiences in relending loan funds. SBA used this information in formulating the relending and loss reserve requirements for the ILP program.

In addition, SBA sought to use flexible approaches in designing ILP program requirements. For example, ILP Intermediaries may use their own forms and underwriting processes for selecting small business borrowers.

As the ILP program is a new lending program, retrospective analyses of existing significant regulations is not applicable to this program.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this rule imposes new reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This new information collection requires that interested nonprofit intermediaries submit an application and exhibits to SBA to facilitate an application selection process. This new information collection also requires certain reporting requirements that selected ILP Intermediaries must fulfill to maintain participation in the ILP Program. SBA is submitting this set of information collections as described below to OMB for review and approval together with the interim final rule.

1. *Title and Description:* Recordkeeping requirements.

Purpose: Section 109.360(a) requires the ILP Intermediary to maintain accurate and current financial records, including books of accounts, and all documents and supporting materials relating to the ILP Intermediary's activities in the ILP program, including files on loan made to Eligible Small Business Concerns. Records may be preserved electronically if the original is available for retrieval within 15 calendar days.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: All ILP Intermediaries will be required to maintain records of their activities in the ILP program.

Given the current appropriated funds, SBA anticipates making loans to 20 ILP Intermediaries in fiscal year 2011 and 20 additional ILP Intermediaries in fiscal year 2012, for a total of 40 ILP Intermediaries.

Estimated Number of Responses: No responses are required.

Estimated Response Time: No responses are required.

Estimated Annual Hour Burden: The annual hour burden is de minimis, because ILP Intermediaries would maintain such records in the ordinary course of business.

2. *Title and Description of Information Collection:* SBA Form XX: Intermediary Lending Pilot Program Application—Part I, Management Assessment Questionnaire and Part II, Exhibits.

Purpose: Part I of this form collects identifying information regarding the intermediary applicant and its Officers, the loan request, lending history, projected lending activity, information regarding current or previous government financing, and the intermediary's financial health and viability. Part II of this form collects supplemental information from the intermediary applicant and its principals such as resumes, organizational charts, loan policies and procedures, one year of financial statements, and Employer Identification Number documentation.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: SBA anticipates 200 ILP Intermediary Applicants will respond to this information collection.

Estimated Number of Responses: 200 estimated responses.

Estimated Response Time: 35 hours estimated response time per applicant.

Total Estimated Annual Hour Burden: 7,000 hours estimated annual hour burden.

3. *Title and Description:* SBA Form XX: ILP Program Activities Report.

Purpose: This electronic form collects quarterly account activity information in the ILP Program Relending Fund and the ILP loan loss reserve account. ILP Intermediaries must use this account to receive ILP loan proceeds from the SBA and to disburse small business loan proceeds to the small business borrower, and to maintain adequate loan loss reserves. The form collects information such as principal repayment from borrowers, interest paid by borrowers, interest earned, disbursements to small business borrowers, and repayments to SBA. Intermediaries must also submit accompanying bank statements (3 months) to support the data reported in the ILP Relending Fund and the ILP loan loss reserve account.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: SBA anticipates 40 ILP Intermediaries to respond to this information collection per quarter.

Estimated Number of Responses: One response per intermediary per quarter, or 160 total estimated responses.

Estimated Response Time: 1 hour estimated response time per quarter.

Estimated Annual Hour Burden: 160 hours estimated annual hour burden.

4. *Title and Description:* Intermediary Lending Program Electronic Reporting System (ILPERS), Portfolio Identification Reports.

Purpose: This electronic submission collects identifying information on each small business borrower such as demographic information, use of proceeds, payment terms, and jobs created and retained.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: SBA anticipates 40 ILP Intermediaries to respond to this information collection.

Estimated Number of Responses: 6 estimated annual responses per intermediary, or 240 total estimated responses.

Estimated Response Time: 15 minutes estimated response time.

Estimated Annual Hour Burden: 60 hours estimated annual hour burden.

5. *Title and Description:* Intermediary Lending Program Electronic Reporting System (ILPERS), Portfolio Status Report.

Purpose: This form collects the payment status and outstanding principal balance of loans to small business borrowers on a quarterly basis.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: SBA anticipates 40 ILP Intermediaries to respond to this information collection per quarter.

Estimated Number of Responses: One response per intermediary per quarter, or 160 total estimated responses.

Estimated Response Time: 30 minutes estimated response time.

Estimated Annual Hour Burden: 2 hours per intermediary annually, or 80 total hours estimated annual hour burden.

7. *Title and Description:* Audited Financial Statements.

Purpose: ILP Intermediaries are required to submit audited financial statements as prepared by an independent certified public accountant. ILP Intermediaries subject to OMB Circular A–133 must submit audits in accordance with that circular.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: SBA anticipates 40 ILP Intermediaries to respond to this information collection.

Estimated Number of Responses: 40 estimated responses.

Estimated Response Time: 80 hours estimated response time per intermediary per year. SBA believes that this burden will be reduced to the extent that many intermediaries already maintain this information for other purposes, and thus any costs resulting from this requirement may be de minimis.

Estimated Annual Hour Burden: 3,200 hours estimated annual hour burden.

8. *Title and Description:* Reports of Changes.

Purpose: ILP Intermediaries must submit ad hoc summaries of any changes in the ILP Intermediary's organization or financing (within 30 calendar days of the change).

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: SBA anticipates 40 ILP Intermediaries to respond to this information collection.

Estimated Number of Responses: 40 estimated responses, based on an assumption that, on average, each intermediary will need to submit one Report of Changes in any given year.

Estimated Response Time: 30 minutes estimated response time per intermediary per year.

Estimated Annual Hour Burden: 20 hours estimated annual hour burden.

SBA invites comments on the ILP program information collections, particularly on: (1) Whether the proposed collection of information is necessary for the proper performance of the program, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information; (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.

Please send comments by the closing date for comment for this interim final rule to SBA Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503

and to Grady B. Hedgespeth, Director of Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Regulatory Flexibility Act 5 U.S.C. 601–612

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires administrative agencies to consider the economic impact of their actions on small entities, which includes small businesses, small nonprofit businesses, and small local governments. The RFA requires agencies to prepare a regulatory flexibility analysis, which describes the economic impact that the rule will have on small entities, or certify that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking are required. Rules are exempt from the APA notice and comment requirements when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. As detailed above, SBA has determined that there is good cause to adopt this rule without prior public participation; therefore, the rule is also exempt from the RFA requirements. SBA invites comments on this determination.

List of Subjects in 13 CFR Part 109

Community development, Loan program—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR Chapter I by adding part 109 to read as follows:

PART 109—INTERMEDIARY LENDING PILOT PROGRAM

Subpart A—Introduction

Sec.

109.10 Description of the Intermediary Lending Pilot program.
109.20 Definitions.

Subpart B—ILP Intermediary Application and Selection Process

109.100 ILP Intermediary eligibility and continuing participation requirements.
109.200 Application to become an ILP Intermediary.
109.210 Evaluation and selection of ILP Intermediaries.
109.220 Loan limits—loans to ILP Intermediaries.

Subpart C—ILP Program Requirements

109.300 General.
109.310 Terms of loans to ILP Intermediaries.
109.320 ILP Loan purposes.
109.330 ILP Relending Fund.
109.340 Lending requirements.
109.350 Maintenance of loan loss reserve.
109.360 Recordkeeping and reporting requirements.

Subpart D—Requirements for ILP Intermediary Loans to Small Businesses

109.400 Eligible Small Business Concerns.
109.410 Loan limits—loans to Eligible Small Business Concerns.
109.420 Terms of Loans from ILP Intermediaries to Eligible Small Business Concerns.
109.430 Loan purposes.
109.440 Requirements imposed under other laws and orders.
109.450 SBA Review of ILP Intermediary loans to Eligible Small Business Concerns.
109.460 Prohibition on sales of ILP Intermediary loans to Eligible Small Business Concerns.

Subpart E—Oversight

109.500 SBA access to ILP Intermediary files.
109.510 On-site and off-site reviews.
109.520 Events of default and revocation of authority to participate in the ILP program.
109.530 Debarment and Suspension.

Authority: 15 U.S.C. 634(b)(6), (b)(7), and 636(l).

Subpart A—Introduction

§ 109.10 Description of the Intermediary Lending Pilot program.

The Small Business Intermediary Lending Pilot program (ILP program) provides direct loans to ILP Intermediaries to make loans of up to $200,000 to startup, newly established, or growing small businesses. ILP Intermediaries continue to relend a portion of the payments received on small business loans made under the program until they have fully repaid their loans to SBA.

§ 109.20 Definitions.

Affiliate has the meaning set forth in § 121.103 of this chapter.

Associate. (1) An Associate of an ILP Intermediary is:

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the ILP Intermediary or its debt instruments, or an agent involved in the loan process;

(ii) Any entity in which one or more individuals referred to in paragraph (1)(i) of this definition or a Close Relative of any such individual owns or controls at least 20 percent;

(2) An Associate of an Eligible Small Business Concern is:

(i) An officer director, owner of more than 20 percent of the equity, or key employee of the Eligible Small Business Concern;

(ii) Any entity in which one or more individuals referred to in paragraphs (2)(i) of this definition owns or controls at least 20 percent; and

(iii) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company (SBIC) licensed by SBA).

(3) For the purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the ILP Note or the loan to the Eligible Small Business Concern is outstanding:

(i) For an ILP Intermediary, the date of the ILP Note;

(ii) For an Eligible Small Business Concern, the date of the loan application to the ILP Intermediary.

Close Relative is a spouse; a parent; a child or sibling, or the spouse of any such person.

Eligible Small Business Concern is a small business that meets the requirements of § 109.400.

ILP Intermediary means a private, nonprofit entity that has applied for and been selected by SBA to receive an ILP Loan through the competitive application process described in this Part.

ILP Loan means a direct loan made by SBA to an ILP Intermediary under this program.

ILP Note means the instrument that represents the obligation of the ILP Intermediary to repay the ILP Loan to SBA.

ILP Program Activities Report means the quarterly report that identifies the use and management of ILP program funds.

ILP Program Requirements are requirements imposed upon an ILP Intermediary by statute, SBA regulations, any agreement executed between SBA and the ILP Intermediary, SBA SOPs, SBA procedural guidance, official SBA notices and forms applicable to the ILP program, any NOFA applicable to the ILP program, and the ILP Note and Loan Authorization, as such requirements are issued and revised by SBA from time to time.

ILP Relending Fund means a federally insured depository account established by the ILP Intermediary at a well-capitalized financial institution which includes, at a minimum, the ILP Loan proceeds and the principal portion of repayments from Eligible Small Business Concerns.

Intermediary Lending Program Electronic Reporting System (ILPERS) means the web-based, electronic reporting system used by the ILP

Intermediary to report each loan made to Eligible Small Business Concerns, to provide aging information on each loan, and to update the outstanding principal balance of each loan until all loans are either paid in full or charged off.

Native American Tribal Government means the governing body of any Native American tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans.

Portfolio Identification Report means the electronic report that collects identifying information on loans made to Eligible Small Business Concerns, including demographic information, use of proceeds, payment terms, and jobs created and retained.

Portfolio Status Report means the quarterly electronic report that summarizes the payment status and outstanding principal balances of an ILP Intermediary's loans to Eligible Small Business Concerns.

Subpart B—ILP Intermediary Application and Selection Process

§ 109.100 ILP Intermediary eligibility and continuing participation requirements.

(a) *Organization type:* An ILP Intermediary must be a private, nonprofit entity other than an intermediary participating in the SBA Microloan program as described in subpart G of Part 120. Eligible entities include:

(1) Private, nonprofit community development corporations;

(2) Consortiums of private, nonprofit organizations or nonprofit community development corporations; and

(3) Agencies of or nonprofit entities established by Native American tribal governments.

(b) *Prior experience:* An ILP Intermediary must have at least one year of successful experience making and servicing loans to startup, newly established, or growing small businesses.

(c) *Management and operations.* (1) An ILP Intermediary must have paid staff with loan making and servicing experience acceptable to SBA.

(2) An ILP Intermediary must have a continuing ability to evaluate, process, close, disburse, service and liquidate small business loans including, but not limited to:

(i) Holding sufficient permanent capital (as determined by SBA) to support lending activities under this program; and

(ii) Maintaining satisfactory SBA performance, as determined by SBA in its discretion.

(3) An ILP Intermediary must meet and maintain the ethical requirements of 13 CFR 120.140.

(4) An ILP Intermediary (and any Affiliates) that participates in other SBA programs must be in compliance with those program requirements.

(5) An ILP Intermediary must be in good standing with its Federal and/or State regulator, as applicable.

(6) An ILP Intermediary must have the ability to comply with the ILP Program Requirements, including reporting requirements, as such requirements are revised from time to time, and maintain compliance with ILP Program Requirements for as long as the ILP Intermediary participates in the ILP program.

§ 109.200 Application to become an ILP Intermediary.

(a) *Notice of Funds Availability (NOFA).* SBA will periodically publish a NOFA in the **Federal Register**, advising potential applicants of the availability of funds for the ILP program. Any eligible entity may then submit an application to become an ILP Intermediary. When submitting its application, an applicant must comply with both these regulations and any requirements specified in the NOFA, including submission deadlines. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round.

(b) *Contents of application.* The application to become an ILP Intermediary must include:

(1) Documentation that the applicant meets the eligibility and continuing participation requirements for the ILP program set forth in § 109.100;

(2) A completed ILP Intermediary application form provided by SBA;

(3) A description of:

(i) The type of small businesses to be assisted;

(ii) The size and range of loans to be made;

(iii) The interest rate and terms of the loans to be made;

(iv) The geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

(v) The status of small businesses in the area to be served and an analysis of the availability of credit; and

(4) Any additional forms and documentation required by SBA.

§ 109.210 Evaluation and selection of ILP Intermediaries.

(a) *General.* SBA will evaluate and select applicants to participate in the ILP program in accordance with this section and the NOFA. SBA reserves the right, in its discretion, to loan less than all available funds.

(b) *Number of ILP Intermediaries.* SBA will make loans to not more than 20 of the selected ILP Intermediaries in each of the fiscal years for which funding is available.

(c) *Eligibility and completeness.* SBA will not consider any application that is not complete or that is submitted by an applicant that does not meet the eligibility and participation criteria established by SBA. SBA, at its sole discretion, may request from an applicant additional information, including information concerning participation criteria or the application, in order to allow SBA to consider that applicant's application. Failure to provide such additional information may be considered grounds to reject the application.

(d) *Evaluation criteria.* Eligible and complete applications will be evaluated and scored based on the criteria established by SBA, as set forth in the NOFA. In general, eligible applications with the highest scores will be granted ILP Intermediary status, up to the maximum number allowed by statute. SBA reserves the right to select ILP Intermediaries in such a way as to ensure geographic diversity of areas served by ILP Intermediaries.

§ 109.220 Loan limits—loans to ILP Intermediaries.

No ILP Intermediary (including Affiliates) may receive more than $1,000,000 in ILP Loans.

Subpart C—ILP Program Requirements

§ 109.300 General.

An ILP Intermediary must maintain compliance with all ILP Program Requirements until the ILP Intermediary has repaid its ILP Loan to SBA. With respect to its activities in the ILP program, the ILP Intermediary is subject to the requirements of §§ 120.140 (What ethical requirements apply to participants?), 120.197 (Notifying SBA's Office of Inspector General of suspected fraud), 120.412 (Other services Lenders may provide Borrowers), and 120.413 (Advertisement of relationship with SBA) of this chapter, in addition to the regulations specifically set forth in this Part. The ILP Intermediary and any contractor(s) it may have are independent contractors that are responsible for their own actions with

respect to small business loans made under this program. SBA has no responsibility or liability for any claim by an Eligible Small Business Concern or other party for any injury as a result of any wrongful action taken by the ILP Intermediary or an employee, agent or contractor of an ILP Intermediary.

§ 109.310 Terms of loans to ILP Intermediaries.

(a) *Disbursement.* An ILP Intermediary must be in compliance with ILP Program Requirements in order to draw down its ILP Loan funds. SBA may place restrictions on disbursement, including the amount disbursed to an ILP Intermediary at one time or conditions on subsequent disbursements.

(b) *Term.* An ILP Loan must be repaid within 20 years from the date of the ILP Note.

(c) *Interest rate.* The interest rate for an ILP Loan to an ILP Intermediary is fixed at one percent per annum.

(d) *Repayment.* Payments of principal and interest must be made on a quarterly basis, except SBA will defer the first payment on an ILP Loan for two years from the date of the first disbursement. Interest will accrue on all disbursed funds during the deferment period. Accrued interest will be added to the outstanding principal balance at the end of the deferment period and amortized over the remaining life of the loan. An ILP Intermediary may prepay an ILP Loan at any time without penalty.

(e) *Collateral.* SBA does not require the ILP Intermediary to provide any collateral for an ILP Loan.

(f) *Fees.* SBA does not charge an ILP Intermediary any fees for an ILP Loan.

§ 109.320 ILP Loan purposes.

(a) ILP Loan funds must only be used to provide direct loans to Eligible Small Business Concerns for working capital, real estate, or the acquisition of materials, supplies, furniture, fixtures, or equipment.

(b) ILP Loan funds must not be used for any other purpose, including maintenance of loan loss reserves or payment of administrative costs or expenses of the ILP Intermediary.

§ 109.330 ILP Relending Fund.

(a) *General.* The ILP Intermediary must establish and maintain an ILP Relending Fund for as long as it has an outstanding balance owed to SBA under this program. The ILP Relending Fund must be in an account separate and distinct from the ILP Intermediary's other assets and financial activities.

(b) *Contents of the ILP Relending Fund.* All ILP Loan proceeds disbursed from SBA to the ILP Intermediary must be deposited into the ILP Relending Fund. All payments received by the ILP Intermediary on loans made to Eligible Small Business Concerns must also be deposited into the ILP Relending Fund. The ILP Intermediary must not commingle funds from any other public programs (including other SBA programs) in this account.

(c) *Interest earned.* The ILP Intermediary is not required to retain the interest portion of payments received on loans made to Eligible Small Business Concerns in the ILP Relending Fund or to retain the interest earned on the ILP Relending Fund in the ILP Relending Fund.

(d) *Allowable uses of the ILP Relending Fund.* The ILP Intermediary must use the ILP Relending Fund to disburse loans made to Eligible Small Business Concerns under this program and to make payments to SBA on its ILP Loan; it may not use the ILP Relending Fund for any other purposes.

§ 109.340 Lending requirements.

(a) *Initial lending requirement.* The ILP Intermediary must commit 100% of its ILP Loan funds to Eligible Small Business Concerns within two years of the date of the ILP Note. The Associate Administrator for Capital Access (AA/CA) or designee may approve extensions to the initial lending requirement on a case-by-case basis.

(b) *Ongoing relending requirement.* After meeting the initial lending requirement, the ILP Intermediary must relend the funds in the ILP Relending Fund so that the total principal balance of loans outstanding to Eligible Small Business Concerns does not fall below 75% of the outstanding principal balance of the ILP Loan at any time while the ILP Loan is outstanding. Exceptions to this requirement will be considered by the AA/CA or designee on a case by case basis based on the particular facts and circumstances of the ILP Intermediary.

§ 109.350 Maintenance of loan loss reserve.

The ILP Intermediary must maintain a reasonable loan loss reserve appropriate for the quality of the ILP Intermediary's portfolio in a federally insured depository account established by the ILP Intermediary at a well-capitalized financial institution. The loan loss reserve must be in an account separate and distinct from the ILP Intermediary's other assets and financial activities. This reserve must be maintained at not less than 5% of the principal balance of all outstanding loans to Eligible Small Business Concerns made from the ILP Relending Fund. The AA/CA or designee may require the ILP Intermediary to maintain a larger loss reserve if the AA/CA determines that the ILP Intermediary's loss reserve level is potentially inadequate to protect SBA from loss. ILP Relending Fund proceeds must not be used to establish or maintain the loan loss reserve.

§ 109.360 Recordkeeping and reporting requirements.

(a) *Maintenance of records.* The ILP Intermediary must maintain at its principal business office accurate and current financial records, including books of accounts, and all documents and supporting materials relating to the ILP Intermediary's activities in the ILP program, including files on loans made to Eligible Small Business Concerns. Records may be preserved electronically if the original is available for retrieval within 15 calendar days.

(b) *ILP Intermediary reporting.* The ILP Intermediary must submit the following to SBA:

(1) *Portfolio Identification Reports.* All loans made by the ILP Intermediary to an Eligible Small Business Concern under this program must be entered into the Intermediary Lending Program Electronic Reporting System (ILPERS) within seven calendar days of closing the loan.

(2) *Quarterly reports.* By the 30th calendar day following the end of each calendar quarter, each ILP Intermediary must submit a Portfolio Status Report via ILPERS to update the payment status and outstanding principal balances of its loans to Eligible Small Business Concerns. Additionally, each ILP Intermediary must submit an ILP Program Activities Report with accompanying bank statements to demonstrate the use and management of ILP program funds.

(3) *Audited financial statements.* Within four months after the close of the ILP Intermediary's fiscal year, the ILP Intermediary must submit to SBA audited financial statements as prepared by an independent certified public accountant, except that ILP Intermediaries subject to OMB Circular A–133 must submit audits prepared in accordance with that circular. The AA/CA or designee may provide extensions to the filing deadline.

(4) *Reports of changes.* An ILP Intermediary must submit to SBA a summary of any changes in the ILP Intermediary's organization or financing (within 30 calendar days of the change), such as:

(i) Any change in its name, address or telephone number;

(ii) Any change in its charter, bylaws, or its officers or directors (to be accompanied by a statement of personal history on the form approved by SBA);

(iii) Any material change in capitalization or financial condition; and

(iv) Any change affecting the ILP Intermediary's eligibility to continue to participate in the ILP program.

(5) *Other reports.* Each ILP Intermediary must submit such other reports as SBA may require from time to time.

Subpart D—Requirements for ILP Intermediary Loans to Small Businesses

§ 109.400 Eligible Small Business Concerns.

(a) To be eligible to receive loans from an ILP Intermediary under this program, a small business must:

(1) Be organized for profit;

(2) Be located in the U.S.;

(3) Be small under the size requirements applicable to 7(a) business loans (including Affiliates);

(4) Be a startup, newly established, or growing small business;

(5) Together with Affiliates and principal owners, not have credit elsewhere; and

(6) Be creditworthy and demonstrate reasonable assurance of repayment of the loan.

(b) The following types of businesses are not eligible to receive a loan from an ILP Intermediary under this program:

(1) Nonprofit businesses (for-profit subsidiaries are eligible);

(2) Financial businesses primarily engaged in the business of lending;

(3) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds;

(4) Life insurance companies;

(5) Businesses located in a foreign country;

(6) Pyramid sale distribution plans;

(7) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;

(8) Businesses engaged in any illegal activity;

(9) Private clubs and businesses which limit the number of memberships for reasons other than capacity;

(10) Government-owned entities (except for businesses owned or controlled by a Native American tribe);

(11) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(12) Consumer and marketing cooperatives (producer cooperatives are eligible);

(13) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;

(14) Businesses in which the ILP Intermediary or any of its Associates owns an equity interest;

(15) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;

(16) Businesses which:

(i) Present live performances of a prurient sexual nature; or

(ii) Derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(17) Businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss unless the agreement provides otherwise;

(18) Businesses primarily engaged in political or lobbying activities; and

(19) Speculative businesses (such as oil wildcatting);

(20) Businesses located in a Coastal Barrier Resource Area (as defined in the Coastal Barriers Resource Act);

(21) Businesses owned or controlled by an applicant or any of its Associates who are more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement;

(22) Businesses in which any Associate is an undocumented (illegal) alien; or

(23) Businesses owned or controlled by an applicant or any of its Associates who are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

§ 109.410 Loan limits—loans to Eligible Small Business Concerns.

No small business (including Affiliates) may have more than $200,000 outstanding under this program at one time. The provisions of § 120.151 do not apply to loans under this program.

§ 109.420 Terms of loans from ILP Intermediaries to Eligible Small Business Concerns.

(a) *General.* The terms of a loan made by the ILP Intermediary to an Eligible Small Business Concern must be agreed to by the ILP Intermediary and the Eligible Small Business Concern. The loan terms must be within the limits established by SBA in these regulations.

(b) *Maximum loan size.* The maximum amount of a loan by the ILP Intermediary to an Eligible Small Business Concern under this program is $200,000.

(c) *Maturity.* The term of a loan by the ILP Intermediary to an Eligible Small Business Concern under this program must be the shortest appropriate term. The maximum loan term is 10 years or less, unless the loan finances or refinances real estate or equipment with a useful life exceeding ten years, in which case the maximum loan term is 25 years.

(d) *Interest rate.* The maximum interest rate the ILP Intermediary may charge for loans less than or equal to $50,000 is 8.75 percent. The maximum interest rate the ILP Intermediary may charge for loans greater than $50,000 is 7%. SBA may adjust the maximum interest rates from time to time; SBA will publish any such change by Notice in the **Federal Register.** Changes to the maximum interest rate do not apply to loans made to Eligible Small Business Concerns prior to publication of the change in the **Federal Register**.

(e) *Fees.* The ILP Intermediary must not impose any fees or direct costs on an Eligible Small Business Concern, except for the following allowed fees or direct costs:

(1) Necessary out-of-pocket expenses, such as filing or recording fees;

(2) The reasonable direct costs of any liquidation;

(3) A late payment fee not to exceed 5 percent of the scheduled loan payment; and

(4) Reasonable application and origination fees, subject to a maximum total fee cap of 1 percent of the amount of the loan to the Eligible Small Business Concern. SBA may adjust the maximum total fee cap from time to time; SBA will publish any such change by Notice in the **Federal Register**.

§ 109.430 Loan purposes.

(a) An Eligible Small Business Concern may only use the proceeds of a loan under this program for the following purposes:

(1) Working capital;

(2) Real estate (except for real estate acquired and held primarily for sale, lease, or investment); and

(3) The acquisition of materials, supplies, furniture, fixtures, or equipment.

(b) Revolving lines of credit are permitted. However, if, at any time, SBA determines that the ILP Intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the Government, the AA/CA or designee may terminate the ILP Intermediary's authority to use the ILP Relending Fund proceeds for revolving lines of credit. Such termination will be by written notice and will prevent the ILP Intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

§ 109.440 Requirements imposed under other laws and orders.

Loans made by the ILP Intermediary under this program must comply with all applicable laws, including §§ 120.170 (Flood insurance), 120.172 (Flood-plain and wetlands management), 120.173 (Lead-based paint), 120.173 (Earthquake hazards), and the civil rights laws (see parts 112, 113, 117, and 136 of this chapter) prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age.

§ 109.450 SBA review of ILP Intermediary loans to Eligible Small Business Concerns.

(a) *Review restrictions.* SBA does not review loans made by an ILP Intermediary under this program before approval of the loan by the ILP Intermediary. The ILP Intermediary is responsible for all loan decisions regarding eligibility (including size).

(b) *Subsequent review.* SBA will periodically review loans made by an ILP Intermediary after approval of the loan by the ILP Intermediary as part of the on-site and off-site reviews described in § 109.510. If SBA discovers that an ILP Intermediary has made a loan under this program to an ineligible business or for an ineligible purpose, SBA will require the ILP Intermediary to refinance the ineligible loan with non-ILP program funds and to deposit into its ILP Relending Fund an amount equal to the outstanding principal balance on the ineligible loan.

§ 109.460 Prohibition on sales of ILP Intermediary Loans to Eligible Small Business Concerns.

An ILP Intermediary may not sell all or any portion of a loan made to an Eligible Small Business Concern without prior written consent from the AA/CA or designee.

Subpart E—Oversight

§ 109.500 SBA access to ILP Intermediary files.

The ILP Intermediary must allow SBA's authorized representatives, including other officers of any other Federal agency and representatives authorized by the SBA Inspector General, during normal business hours, timely access to its facility and files to review, inspect, and copy all records and documents, including electronic and hard copy, relating to the operations of the ILP Intermediary, the ILP Loan, and the loans made from the ILP Relending Fund and other records and documents as requested for oversight of the ILP Intermediary.

§ 109.510 On-site and off-site reviews.

(a) *General.* SBA may conduct off-site reviews and monitoring of ILP Intermediaries, including ILP Intermediaries' self-assessments. SBA may also perform on-site reviews of ILP Intermediaries as needed, as determined by SBA in its discretion.

(b) *Corrective actions.* SBA may require an ILP Intermediary to take corrective actions to address findings from on-site or off-site reviews. Failure to take required corrective actions may constitute an event of default, as described in § 109.520(c).

(c) *Confidentiality of reports.* On-site and off-site review reports and other SBA prepared review related documents are subject to the confidentiality requirements of § 120.1060.

§ 109.520 Events of default and revocation of authority to participate in the ILP program.

(a) *Automatic events of default.* Upon the occurrence of one or more of the events in this paragraph (a), the ILP Loan balance, including accrued interest, is immediately due and payable to SBA without notice and the ILP Intermediary's authority to participate in the ILP program is revoked.

(1) *Insolvency.* The ILP Intermediary becomes equitably or legally insolvent.

(2) *Voluntary assignment.* The ILP Intermediary makes a voluntary assignment for the benefit of creditors without SBA's prior written approval.

(3) *Bankruptcy.* The ILP Intermediary files a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against the ILP Intermediary and is not dismissed within 60 calendar days.

(b) *Events of default with notice and possible opportunity to cure.* Except as provided in paragraph (c) of this section, upon receipt of written notice to the ILP Intermediary of the occurrence (as determined by SBA) of one or more of the events in this paragraph (b), the ILP loan balance, including accrued interest, is immediately due and payable to SBA and the ILP Intermediary's authority to participate in the ILP program is revoked.

(1) *Fraud.* The ILP Intermediary commits a fraudulent act.

(2) *Violation of SBA's ethical requirements.* The ILP Intermediary violates 13 CFR § 120.140.

(3) *Non-notification of events of default.* The ILP Intermediary fails to notify SBA in writing as soon as it knows or reasonably should have known that any event of default exists under this section.

(4) *Non-notification of defaults to others.* The ILP Intermediary fails to notify SBA in writing within ten calendar days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness, issued to or held by anyone other than SBA.

(5) *Failure to make timely payment.* Unless otherwise approved by the AA/CA or designee in writing, the ILP Intermediary fails to make timely payment to SBA on its ILP Loan.

(6) *Failure to take adequate corrective actions.* The ILP Intermediary fails to take adequate corrective actions, to SBA's satisfaction, as required by SBA under § 109.510 within the timeframe requested by SBA.

(7) *Violation of ILP Program Requirements.* The ILP Intermediary violates one or more ILP Program Requirement.

(8) *Actions that increase risk.* The ILP Intermediary takes other action which increases the risk of loss to SBA.

(c) *Opportunity to Cure.* SBA may, in its discretion, provide the ILP Intermediary with an opportunity to cure an event of default identified in paragraph (b) of this section. If SBA provides the ILP Intermediary with such a cure opportunity, SBA will issue written notice discussing the relevant facts, and directing the ILP Intermediary to cure the default and provide SBA with documentation to show that the default has been cured within a specified period of time (generally 15 days). SBA will then provide the ILP Intermediary with a final notification advising whether the default has been satisfactorily cured. In the event SBA determines the default has not been cured, the ILP Loan balance, including accrued interest, is immediately due and payable to SBA and the ILP Intermediary's authority to participate

in the ILP program is revoked upon the ILP Intermediary's receipt of this final notification.

(d) *Appeals.* Notification of default without opportunity to cure under paragraph (b) of this section and final notification of uncured default under paragraph (c) of this section are final agency decisions. An ILP Intermediary may appeal a final agency decision only in the appropriate federal district court.

§ 109.530 Debarment and Suspension.

In accordance with 2 CFR Parts 180 and 2700, SBA may take any necessary action to debar or suspend an ILP Intermediary or any officer, director, general partner, manager, employee, agent or other participant in the affairs of an ILP Intermediary's SBA operations.

Dated: March 28, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–7741 Filed 3–31–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0027; Directorate Identifier 2008–NM–204–AD; Amendment 39–16642; AD 2011–07–05]

RIN 2120–AA64

Airworthiness Directives; Sicma Aero Seat 9140, 9166, 9173, 9174, 9184, 9188, 9196, 91B7, 91B8, 91C0, 91C2, 91C4, 91C5, and 9301 Series Passenger Seat Assemblies; and Sicma Aero Seat 9501311–05, 9501301–06, 9501311–15, 9501301–16, 9501441–30, 9501441–33, 9501311–55, 9501301–56, 9501441–83, 9501441–95, 9501311–97, and 9501301–98 Passenger Seat Assemblies; Installed on Various Transport Category Airplanes

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

ACTION: Final rule.

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

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

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

DATES: This AD becomes effective May 6, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 6, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 13, 2010 (75 FR 1731). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Cracks have been found on seat backrest links P/N (part number) 90–000200–104–1 and 90–000200–104–2. These cracks can significantly affect the structural integrity of seat backrests. Therefore a life limit is introduced on the links. On 9g seats also affected by this problem, stronger unlimited life limits have been developed and their installation has been rendered mandatory. However, on 16g seats the affected links have a direct influence on certification dynamic tests and cannot be replaced by similar stronger links without performing again all dynamic tests for each seat part number.

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

Comments

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

Request To Revise Service Bulletin Reference

Boeing requested that we update all references to Sicma Aero Seat Service Bulletin 90–25–012, Issue 4, dated December 19, 2001, to Issue 5, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004. The commenter justified the request by stating that seat series 91C3 (installed on Boeing Model 737 airplanes) was inadvertently included in Issue 4 of that service bulletin in error, and that Issue 5 of that service bulletin corrects the effectivity by limiting it to those installed seats that are affected. The commenter also requested that we revise the "Relevant Service Information" section of the NPRM to refer to Issue 5 of that service bulletin.

We agree to update the service information in the AD for the reason given. We have revised paragraphs (c), (f)(1) through (f)(4), and (h) of this AD to refer to Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004. We also have added Issue 4 of that service bulletin to paragraph (f)(5) of this AD to give credit for actions done before the effective date of this AD in accordance with Issue 4 of that service bulletin.

We have not changed the "Relevant Service Information" section of the NPRM because that section does not appear in this final rule.

Request To Remove Series 91C3 Seat From the Applicability

Boeing requested that we revise the Applicability, paragraph (c) of the NPRM, to remove seat series 91C3 for the reason stated in the previous comment.

We agree to correct the Applicability of the AD because Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004, corrects the effectivity, and have removed seat series 91C3 from paragraph (c) of this AD.

No Reporting Requirement

We removed paragraph (g)(3) of the NPRM from this final rule because reporting findings is not required.

Conclusion

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

any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 70,073 seats on 163 products of U.S. registry. We also estimate that it will take 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,956,205, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–07–05 Sicma Aero Seat: Amendment 39–16642. Docket No. FAA–2010–0027; Directorate Identifier 2008–NM–204–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Sicma Aero Seats 9140, 9166, 9173, 9174, 9184, 9188, 9196, 91B7, 91B8, 91C0, 91C2, 91C4, 91C5, and 9301 series passenger seat assemblies; and Sicma Aero Seats 9501311–05, 9501301–06, 9501311–15, 9501301–16, 9501441–30, 9501441–33, 9501311–55, 9501301–56, 9501441–83, 9501441–95, 9501311–97, and 9501301–98 passenger seat assemblies; identified in Annex 1, Issue 2, dated March 19, 2004, of Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004; that have backrest links part numbers (P/Ns) 90–000200–104–1 and 90–000200–104–2; and that are installed on, but not limited to, the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1—CERTAIN AFFECTED MODELS

Manufacturer	Model
Airbus	A330–200 and –300 Series Airplanes.
Airbus	A340–200, –300, –500, and –600 Series Airplanes.
The Boeing Company.	777–200, –300, –300ER, and –200LR Series Airplanes.

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

Subject

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

Reason

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

Cracks have been found on seat backrest links P/N (part numbers) 90–000200–104–1 and 90–000200–104–2. These cracks can significantly affect the structural integrity of seat backrests. Therefore a life limit is introduced on the links. On 9g seats also affected by this problem, stronger unlimited life limits have been developed and their installation has been rendered mandatory.

However, on 16g seats the affected links have a direct influence on certification dynamic tests and cannot be replaced by similar stronger links without performing again all dynamic tests for each seat part number.

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

Actions and Compliance

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

(1) At the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, do a general visual inspection for cracking of the backrest links, P/Ns 90–000200–104–1 and 90–000200–104–2, in accordance with Part One, "Checking Procedure," of Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004.

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

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

(2) If, during the inspection required by paragraph (f)(1) of this AD, cracking is found between the side of the backrest link and the lock-out pin hole but the cracking does not pass this lock-out pin hole (refer to Figure 2 of Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004): Within 600 flight hours or 3 months after doing the inspection, whichever occurs first, replace both backrest links of the affected seat with new backrest links having the same part number (P/N 90–000200–104–1 or 90–000200–104–2), in accordance with Part Two, "Replacement Procedure," of Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004.

(3) If, during the inspection required by paragraph (f)(1) of this AD, cracking is found that passes beyond the lock-out pin hole (refer to Figure 2 of Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004): Before further flight, replace both backrest links of the affected seat with new backrest links having the same part numbers (P/N 90–000200–104–1 or 90–000200–104–2), in accordance with Part Two, "Replacement Procedure," of Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004.

(4) If no cracking is found during the inspection required by paragraph (f)(1) of this AD: At the later of the times specified in paragraphs (f)(4)(i) and (f)(4)(ii) of this AD, replace the links, P/Ns 90–000200–104–1 and 90–000200–104–2, with new backrest links having the same part numbers (P/N 90–000200–104–1 or 90–000200–104–2), in accordance with Part Two, "Replacement Procedure," of Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004.

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

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

(5) Actions done before the effective date of this AD in accordance with Sicma Aero Seat Service Bulletin 90–25–012, Issue 3, dated October 3, 2001; and Sicma Aero Seat Service Bulletin 90–25–012, Issue 4, dated December 19, 2001; are acceptable for compliance with the corresponding actions of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

Related Information

(h) Refer to MCAI French Airworthiness Directive 2001–605(AB), dated December 12, 2001; and Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004; for related information.

Material Incorporated by Reference

(i) You must use Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on March 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–6628 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0958; Directorate Identifier 2010–NM–188–AD; Amendment 39–16641; AD 2011–07–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; and DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires installing new in-line fuses for the fuel level float switch and new in-line fuses for the pressure switch, as applicable, and changing the wiring. The proposed actions would affect the left and right wing forward spars, center wing forward spar, forward auxiliary fuel tank, and aft auxiliary fuel tank, as applicable. This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective May 6, 2011.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in the AD as of May 6, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5262; fax: 562–627–5210, e-mail: *Samuel.Lee@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on October 8, 2010 (75 FR 62331). That NPRM proposed to require installing new in-line fuses for the fuel level float switch and new in-line fuses for the pressure switch, as applicable, and changing the wiring.

Comments

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

Request Revision of FAA AD 2008–11–15

Aeropostal requested that we issue this AD as a revision to existing AD 2008–11–15. Aeropostal stated that the requirement of installing fuses in the proposed AD is incorporated by Boeing Critical Design Configuration Control Limitation (CDCCL) 20–13 of Twinjet Special Compliance Items Report, MDC–92K9145, Revision J, dated January 26, 2010.

We disagree with the request to revise AD 2008–11–15. AD 2008–11–15 requires incorporation of Boeing Twinjet Special Compliance Items Report, MDC–92K9145, Revision G, dated June 7, 2007, which does not include CDCCL 20–13. This proposed AD does not require incorporating CDCCL 20–13. This AD requires the installation of new in-line fuses for the fuel level float switch and new in-line fuses for the pressure switch. We might consider future rulemaking to revise AD 2008–11–15 to include CDCCL 20–13. No change has been made to AD 2008–11–15 or this AD in this regard.

Request for Clarification

Aeropostal requested clarification concerning the NPRM and whether it will satisfy the requirements of AD 2008–11–15.

We agree that clarification is needed. AD 2008–11–15 requires revising the maintenance program or the Airworthiness Limitations (AWL) section of the Instructions for Continued Airworthiness to incorporate new AWLs for fuel tank systems, in accordance with Boeing Twinjet Special Compliance Items Report, MDC–92K9145, Revision G, dated June 7, 2007. This AD has different requirements including the installation of new in-line fuses for the fuel level float switch and new in-line fuses for the pressure switches. No change has been made to this AD in this regard.

Explanation of Change Made to the AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change:

- Is consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Does not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 275 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	Up to 17 work-hours × $85 per hour = Up to $1,445[1].	Between $289 and $1,449[1] ...	Between $1,734 and $2,894[1]	Between $476,850 and $795,850.[1]

[1] Depending on airplane group as identified in Boeing Service Bulletin DC9–28–217, Revision 1, dated August 12, 2010.

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

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

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–07–04 The Boeing Company: Amendment 39–16641; Docket No. FAA–2010–0958; Directorate Identifier 2010–NM–188–AD.

Effective Date

(a) This AD is effective May 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A), DC–9–32F (C9–B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes, certificated in any category; as identified in Boeing Service Bulletin DC9–28–217, Revision 1, dated August 12, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Installation

(g) Within 60 months after the effective date of this AD: Install new in-line fuses for the fuel level float switch and new in-line fuses for the pressure switch, as applicable; and change the wiring; on the left and right wing forward spars, center wing forward spar, forward auxiliary fuel tank, and aft auxiliary fuel tank, as applicable; in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–28–217, Revision 1, dated August 12, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin DC9–28–217, dated December 1, 2009, are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

Related Information

(j) For more information about this AD, contact Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5262; fax: 562–627–5210; e-mail: *Samuel.Lee@faa.gov.*

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin DC9–28–217, Revision 1, dated August 12, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on March 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–6633 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0436; Directorate Identifier 2009–NM–230–AD; Amendment 39–16643; AD 2011–07–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) 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:

* * * There have recently been several in-service occurrences that have highlighted the inability of the existing [wing anti-ice] system to detect a low-heat condition in the wing leading edge at all times, with the potential consequence of unannunciated asymmetric ice build-up on the wing. * * *

Such a condition, in combination with maneuvers close to stick shaker activation, could possibly result in reduced controllability of the aircraft.

* * * * *

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

DATES: This AD becomes effective May 6, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 6, 2011.

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

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 10, 2010 (75 FR 25788). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

At present, the Wing Anti-Ice System (WAIS) sufficient heat switches/sensors on CL–600–2B19 aircraft are located at the inboard end of each wing and require a simultaneous low-pressure signal to generate a L or R WING A/ICE amber caution. However, there have recently been several in-service occurrences that have highlighted the inability of the existing system to detect a low-heat condition in the wing leading edge at all times, with the potential consequence of unannunciated asymmetric ice build-up on the wing. These have included partial failure of several piccolo ducts [ref: Airworthiness Directive (AD) CF–2008–30] and partial (not fully closed or open) failure of a modulating and shut-off valve, the latter resulting in unannunciated asymmetric ice build-up on the wing leading edge. Such a condition, in combination with maneuvers close to stick shaker activation, could possibly result in reduced controllability of the aircraft.

This directive mandates:

(a) Revision of the Airplane Flight Manual (AFM) to notify the flight crew that, following installation and activation of the low-heat detection switches, certain WAIS mode selection changes may result in a two-minute inhibition of the wing anti-ice message, if posted;

(b) Revision of the approved maintenance schedule to include one revised and three new functional checks that are required following activation of the low-heat detection switches;

(c) Replacement of the Data Concentrator Units (DCUs) with DCUs incorporating a software update that caters for the new outboard low-heat detection switches and generates the appropriate anti-ice message for the flight crew when a low-heat condition is detected;

Note: Although not related to this directive, the software update also corrects the sampling rate of two previously non-compliant Flight Data Recorder (FDR) parameters, normal acceleration and pitch attitude.

(d) Installation of the low-heat detection switches in the wing outboard leading edges, the wing A/ICE box assembly and associated wires; and

(e) Activation of the low-heat detection switches.

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

Comments

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

Support for the NPRM

Air Line Pilots Association, International (ALPA) stated that it agrees that all reasonable steps should be taken to avoid reduced controllability while operating in icing conditions. ALPA stated that it supports the NPRM, but also encouraged the FAA to implement it as soon as possible to enable full compliance before winter.

Requests To Revise Costs of Compliance

Limited Brands and Air Wisconsin requested that we revise the costs of compliance. Limited Brands disagreed with the estimate of 21 work-hours and the cost of $1,785 per product to comply with the proposed AD. Limited Brands stated that the modification of the data concentrator unit (DCU), as required by paragraph (g)(3) of the NPRM, costs $1,200, the installation required by paragraph (g)(4) of the NPRM costs $3,300, and additional labor costs are $25,000, which brings the actual cost to $30,000 per airplane. Air Wisconsin stated it calculated that the costs are $600 for each of the two upgrades, $2,570 for other required parts, and 70 work-hours—for a total of $9,720 per airplane.

We agree to revise the Costs of Compliance section of this AD. We have based our cost estimate on the service information and information from the manufacturer, and have calculated the costs for complying with the AD as follows: 2 work-hours for revising the Limitations section of the AFM and the ALI; 3 work-hours for replacing the DCU; 72 work-hours for installing the switches, assemblies, and wires; and 4 work-hours for activating the switches. We also calculated $4,500 for parts. We revised the Costs of Compliance section of this AD accordingly.

Request To Clarify the Modification to the Wing Leading Edges

Air Wisconsin requested clarification regarding the modification of the wing leading edges. Air Wisconsin noted that the effectivity is against the airplane models but Bombardier Service Bulletin 601R–30–031, Revision D, dated February 3, 2010, specifies modifying the leading edges, which was not addressed in the NPRM. Air Wisconsin noted that, if a non-modified spare leading edge is installed, there could be cause for confusion.

We agree to provide clarification. The actions required by paragraph (g)(4) of this AD include modifying the leading edges.

Request To Revise the Compliance Time for Requirements of Paragraph (g)(2) of the NPRM for Task C30–10–141–01

Mesa Airlines requested that we clarify the requirements of paragraph (g)(2) of the NPRM for Task C30–10–141–01. Mesa Airlines stated that on page 2A–11 of Appendix A of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirement Manual (MRM), Task C30–10–141–10 provides the functional check of the wing anti-ice standby overheat switches and overheat/sufficient heat sensors and associated circuitry with an interval of 6,000 flight hours. Mesa Airlines stated that page 1–2–35 of Section 2 of Part 1 of the Bombardier CL–600–2B19 Maintenance Review Board (MRB) Report, Task 30–12–12–01, "Functional check of the wing anti-ice overheat sensors (duplicate Certification Maintenance Requirements (CMR) C30–10–141–01)," provides a compliance time of 4,000 flight hours. Mesa Airlines also stated that page 1–1–6 of Section 1 of Part 1 of the Bombardier CL–600–2B19 MRM states the following in Note 15: "This task has a duplicate CMR requirement. Refer to Maintenance Requirements Manual, CSP–A–053, Part 2, Appendix A, for identification of specific requirements regarding handling of CMRs. Where the CMR interval for an MRB report task is more restrictive, the CMR interval takes precedence. When the interval for an MRB report task is more restrictive, the

MRB report task interval will take precedence."

Mesa Airlines asked that we clarify the NPRM as to which interval needs to be tracked—6,000 flight hours or 4,000 flight hours.

We agree to clarify. The intent of the AD is to introduce the CMR tasks that are associated with the new switches. CMR Task C30–10–141–01 was inadvertently mandated in Canadian AD CF–2009–37 and was carried over into the NPRM. The MRB group is currently looking into harmonizing these task intervals. Therefore, we have removed CMR Task C30–10–141–01 from Table 1 of this final rule.

Request To Clarify Required Service Information

Air Wisconsin requested that we clarify the name of the service information in paragraph (g)(2) of the NPRM. Air Wisconsin stated that paragraph (g)(2) of the NPRM refers to "Airworthiness Limitations Instructions." Air Wisconsin asked if it should instead be "Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM), Appendix A, Certification Maintenance Requirements (CMR)."

We agree with the commenter's suggested service information citation. We have changed paragraph (g)(2) of this final rule accordingly.

Request To Revise Compliance Time in Table 1 of the NPRM

Air Wisconsin requested that we revise the compliance time in Table 1 of the NPRM. Air Wisconsin stated that under the column heading "Initial Compliance Time (whichever occurs later)" for Tasks C30–10–141–03, C30–10–141–05, and C30–10–141–07 in Table 1, the compliance time under that column heading should read "Before the accumulation of 6,000 flight hours, or if previously accomplished, within 6,000 flight hours since last accomplishment, whichever comes first." The commenter did not provide a reason for these suggestions.

We agree with the commenter's suggested change. The intent of Table 1 is to establish the initial compliance times for accomplishment of the specified tasks because only repetitive intervals are specified in Bombardier TR 2A–46, dated July 24, 2009. However, we acknowledge that some operators might have previously accomplished the initial tasks and could be doing those tasks repetitively. The commenter's suggested language would provide credit for earlier accomplishment of the tasks for those operators. We have revised Table 1 to include the language suggested by the commenter.

Request To Remove Note 3 of the NPRM

Air Wisconsin requested to remove Note 3 from the NPRM. Air Wisconsin stated that the inspection requirements in Bombardier Temporary Revision (TR) 2A–46, dated July 24, 2009, are already contained in the general revision of the MRM, specifically, Revision 9, dated December 10, 2009. Air Wisconsin stated that this updated general revision makes Note 3 irrelevant and, therefore, the note should be removed.

We disagree. The note is necessary to keep operators in compliance when the TR is incorporated into general revisions. Operators that have a revision of the MRM that contains the information in Bombardier TR 2A–46 are in compliance. We have not changed the final rule in regard to this issue.

Request To Remove Note 4 of the NPRM

Air Wisconsin requested we remove Note 4 from the NPRM. Air Wisconsin stated this note is not pertinent to the content of the NPRM because Task 30–11–41–820–801 is not part of Bombardier Service Bulletin 601R–30–031, Revision D, dated February 3, 2010, and should be removed.

We disagree. Task 30–11–41–820–801 is pertinent to this AD because it is part of the Bombardier CRJ Series Regional Jet Aircraft Maintenance Manual, and it provides guidance to correct alignment of the piccolo ducts since a small number of cases have been reported in which they were found to have been installed in the opposing wing, resulting in the incorrect orientation of the bleed holes. One of the requirements of this AD is to install the low-heat direction switches in the wing outboard leading edges. This task requires particular attention to the correct alignment of the piccolo ducts after the installation of the low-heat detection switches. We have not changed the final rule in regard to this issue.

Request To Revise Compliance Time for Requirements of Paragraph (g)(5) of the NPRM

Air Wisconsin, Mesaba Airlines, and Mesa Airlines requested that we revise the compliance time for activating the outboard low-heat detection switches, as proposed by paragraph (g)(5) of the NPRM. Air Wisconsin requested that incorporating the procedures specified in Part F of the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–031, Revision D, dated February 3, 2010, should be performed at the next heavy maintenance visit, provided that parts (kits) are available. Air Wisconsin stated that it has scheduled these tasks to be completed by the end of December 2011. Mesaba Airlines requested that the compliance time in paragraph (g) of the NPRM be revised from 11 months to 5,000 flight hours after the effective date of this AD. Mesaba Airlines stated that the 11-month compliance time for the modification will result in extended downtime and cause interruptions. Mesa Airlines stated that it agrees with Mesaba Airlines' request to change the compliance time from months to hours.

We disagree. In developing the compliance time for this AD action, we considered not only the safety implications of the identified unsafe condition, but the average utilization rate of the affected fleet, the practical aspects of an orderly modification of the fleet during regular maintenance periods, the availability of required parts, and the time necessary for the rulemaking process. The proposed compliance time, which is based on the effective date of the final rule, was determined to be appropriate. However, under the provisions of paragraph (h) of the final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed the final rule in regard to this issue.

Clarification of Changes to This AD

We have revised paragraph (e) of this AD by removing some text and retaining only the text that applies to the Reason section of this AD.

In addition, we have removed paragraph (h)(3) of the NPRM because this AD does not contain a reporting requirement.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD affects 599 products of U.S. registry. We also estimate that it takes about 81 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Parts cost $4,500 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,819,615, or $11,385 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–07–06 Bombardier, Inc.: Amendment 39–16643. Docket No. FAA–2010–0436; Directorate Identifier 2009–NM–230–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 8101 inclusive.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 30 and 31: Ice and rain protection, and instruments, respectively.

Reason

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

* * * There have recently been several in-service occurrences that have highlighted the inability of the existing [wing anti-ice] system to detect a low-heat condition in the wing leading edge at all times, with the potential consequence of unannunciated asymmetric ice build-up on the wing. * * * Such a condition, in combination with maneuvers close to stick shaker activation, could possibly result in reduced controllability of the aircraft.

* * * * *

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, revise the Limitations and Normal Procedures sections of the Canadair Regional Jet Airplane Flight Manual (AFM), CSP A–012, to include the information in Canadair (Bombardier) Temporary Revision (TR) RJ/164–2, dated May 14, 2009. This TR introduces procedures for operation in icing conditions. Operate the airplane according to the limitations and procedures in this TR.

Note 2: This may be done by inserting a copy of Canadair (Bombardier) TR RJ/164–2, dated May 14, 2009, into the AFM. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Canadair (Bombardier) TR RJ/164–2, dated May 14, 2009.

(2) Within 30 days after the effective date of this AD, revise the maintenance program by incorporating the inspection requirements for Tasks C30–10–141–03, C30–10–141–05, and C30–10–141–07, contained in Bombardier TR 2A–46, dated July 24, 2009, into Appendix A, "Certification Maintenance Requirements," of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM). The initial compliance times for the tasks identified in Bombardier TR 2A–46, dated July 24, 2009, are specified in Table 1 of this AD.

Note 3: The actions required by paragraph (g)(2) of this AD may be done by inserting a copy of Bombardier TR 2A–46, dated July 24, 2009, into the Bombardier CL–600–2B19 MRM. When this TR has been included in general revisions of the MRM, the general revisions may be inserted into the MRM, provided the relevant information in the general revision is identical to that in Bombardier TR 2A–46, dated July 24, 2009.

TABLE 1—INITIAL COMPLIANCE TIMES FOR TASKS IN BOMBARDIER TR 2A–46

Task	Applicability	Initial compliance time (whichever occurs later)	
C30–10–141–03	Airplanes on which Modification Summary TC601R17494 or actions specified in Bombardier Service Bulletin 601R–30–031 have been done.	Before the accumulation of 6,000 total flight hours; or if accomplished previously, within 6,000 flight hours since this task was last accomplished.	Within 5 flight hours or 30 days after the effective date of this AD, whichever occurs later.
C30–10–141–05	Airplanes with outboard sufficient heat switches installed in accordance with Modification Summary TC601R17494 or actions specified in Bombardier Service Bulletin 601R–30–031 have been done.	Before the accumulation of 6,000 total flight hours; or if accomplished previously, within 6,000 flight hours since this task was last accomplished.	Within 5 flight hours or 30 days after the effective date of this AD, whichever occurs later.
C30–10–141–07	Airplanes with outboard sufficient heat switches installed in accordance with Modification Summary TC601R17494 or actions specified in Bombardier Service Bulletin 601R–30–031 have been done.	Before the accumulation of 6,000 total flight hours; or if accomplished previously, within 6,000 flight hours since this task was last accomplished.	Within 5 flight hours or 30 days after the effective date of this AD, whichever occurs later.

(3) For airplanes having S/Ns 7003 through 8095 inclusive: Before or concurrently with accomplishing the actions required by paragraph (g)(5) of this AD: Replace any data concentrator units (DCUs) having part number (P/N) 622–9820–007, 622–9820–008, or 622–9820–009 with modified DCUs having P/N 622–9820–010, and, if applicable, modify the configuration strapping units (CSUs), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–31–034, Revision A, dated April 10, 2008.

(4) Before or concurrently with accomplishing the actions required by paragraph (g)(5) of this AD: Install the outboard low-heat detection switches, and wing A/ICE box assembly and its associated wires, in accordance with the Accomplishment Instructions of Parts A, C, D, and E of Bombardier Service Bulletin 601R–30–031, Revision D, dated February 3, 2010.

Note 4: A small number of cases have been reported in which piccolo ducts were found to have been installed in the opposite wing, resulting in the incorrect orientation of the bleed holes. During reinstallation of the piccolo ducts and leading edge assemblies after installing the low-heat detection switches, particular attention should be paid to the correct alignment of the piccolo ducts. Guidance can be found in Task 30–11–41–820–801 of the Canadair CRJ Series Regional Jet Aircraft Maintenance Manual.

(5) Within 11 months after the effective date of this AD: Activate the outboard low-heat detection switches in accordance with Part F of the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–031, Revision D, dated February 3, 2010.

(6) Actions accomplished in accordance with the service information specified in Table 2 of this AD, before the effective date of this AD, are acceptable for compliance with the corresponding actions required by paragraphs (g)(4) and (g)(5) of this AD.

TABLE 2—ACCEPTABLE SERVICE INFORMATION

Bombardier Service Bulletin—	Revision—	Dated—
601R–30–031	Original	May 15, 2009.
601R–30–031	A	September 8, 2009.
601R–30–031	B	October 28, 2009.
601R–30–031	C	December 23, 2009.

(7) Replacing DCUs P/N 622–9820–007, 622–9820–008, or 622–9820–009 with modified DCUs having P/N 622–9820–010, and modifying CSUs, are also acceptable for compliance with the requirements of paragraph (g)(3) of this AD if done before the effective date of this AD, in accordance with Accomplishment Instructions of Bombardier Service Bulletin 601R–30–034, dated November 19, 2007.

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: The MCAI specifies to include the revised Task C30–10–141–01. This AD does not include Task 30–10–141–01. This difference has been coordinated with TCCA.

Other FAA AD Provisions

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

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

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

Related Information

(i) Refer to MCAI Transport Canada Civil Aviation (TCCA) Airworthiness Directive CF–2009–37, dated September 30, 2009; and the service information specified in Table 3 of this AD; for related information.

TABLE 3—SERVICE INFORMATION

Service information	Revision	Date
Bombardier Service Bulletin 601R–30–031	D	February 3, 2010.
Bombardier Service Bulletin 601R–31–034	A	April 10, 2008.
Bombardier Temporary Revision 2A–46 to Appendix A—Certification Maintenance Requirements of Part 2 of the Bombardier CL-600–2B19 Maintenance Requirements Manual.	Original	July 24, 2009.
Canadair (Bombardier) Temporary Revision RJ/164–2 to the Canadair Regional Jet Airplane Flight Manual CSP A–012.	Original	May 14, 2009.

Material Incorporated by Reference

(j) You must use the service information contained in Table 4 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

TABLE 4—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision	Date
Bombardier Service Bulletin 601R–30–031	D	February 3, 2010.
Bombardier Service Bulletin 601R–31–034	A	April 10, 2008.
Bombardier Temporary Revision 2A–46 to Appendix A—Certification Maintenance Requirements of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual.	Original	July 24, 2009.
Canadair (Bombardier) Temporary Revision RJ/164–2 to the Canadair Regional Jet Airplane Flight Manual CSP A–012.	Original	May 14, 2009.

Issued in Renton, Washington, on March 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–6630 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1304; Directorate Identifier 2010–NM–254–AD; Amendment 39–16644; AD 2011–07–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) 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:

* * * Under certain conditions, an ignition source may develop in the wing tank vapour space, due to insufficient clearance between the wiring along the Fuel Quantity Tank Units (FQTU's) and the local reinforcing structure around the upper skin cut-out.

This condition, if not corrected, in combination with flammable fuel vapours, could result in a wing tank explosion and consequent loss of the aeroplane.

* * * * *

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

DATES: This AD becomes effective May 6, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 6, 2011.

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

FOR FURTHER INFORMATION CONTACT: 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:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 5, 2011 (76 FR 482). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

* * * The FAA has published Special Federal Aviation Regulation (SFAR) 88, and the [Joint Aviation Authorities] JAA has published Interim Policy INT/POL/25/12. The design review conducted by Fokker Services on the Fokker F28 type design in response to these regulations revealed that, under certain conditions, an ignition source may develop in the wing tank vapour space, due to insufficient clearance between the wiring along the Fuel Quantity Tank Units (FQTU's) and the local reinforcing structure around the upper skin cut-out.

This condition, if not corrected, in combination with flammable fuel vapours, could result in a wing tank explosion and consequent loss of the aeroplane.

For the reasons described above, this AD requires a one-time [detailed] inspection to investigate if a clearance of 3 mm (0.12 inch) or more is available between the FQTU

probes wiring and the surrounding reinforcement structure of the wing upper skin and corrective rework actions, depending on findings.

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

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,020, or $510 per product.

In addition, we estimate that any necessary follow-on actions will take about 21 work-hours and require parts costing $0, for a cost of $1,785 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–07–07 Fokker Services B.V.: Amendment 39–16644. Docket No. FAA–2010–1304; Directorate Identifier 2010–NM–254–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

* * * Under certain conditions, an ignition source may develop in the wing tank vapour space, due to insufficient clearance between the wiring along the Fuel Quantity Tank Units (FQTU's) and the local reinforcing structure around the upper skin cut-out.

This condition, if not corrected, in combination with flammable fuel vapours, could result in a wing tank explosion and consequent loss of the aeroplane.

* * * * *

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.

Detailed Inspection and Corrective Actions

(g) At the next scheduled opening of the fuel tanks, but not later than 84 months after the effective date of this AD, do a detailed inspection for minimum clearance of the gap between the FQTU wiring harness and the outer wing FQTU hole reinforcement structure, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010.

(h) If during the inspection required by paragraph (g) of this AD, the minimum clearance is found to be insufficient, as defined in the Accomplishment Instructions of Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010, before further flight, rework the surrounding structure to remove the possibility of an ignition source, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Inspections accomplished before the effective date of this AD according to Fokker Service Bulletin SBF28–57–097, dated May 6, 2010, are considered acceptable for compliance with the requirements of paragraph (g) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0156, dated August 3, 2010; and Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010; for related information.

Material Incorporated by Reference

(l) You must use Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact 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*.

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

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

Issued in Renton, Washington, on March 15, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–7202 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0261; Directorate Identifier 2011–NM–028–AD; Amendment 39–16648; AD 2011–07–11]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 50 Airplanes

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

ACTION: Final rule; request for comments.

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

On two occurrences on Mystère-Falcon 50 aeroplanes in service, it was detected that two pipes had been swapped in maintenance at the frame 42 firewall. The swapped lines are the extinguishing system line to engine # 2, and engine # 2 Low Pressure (LP) bleed line.

If the swapping of these two lines is not detected and corrected, in case of engine # 2 fire, the fire extinguishing capability would not be operational.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective April 18, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 18, 2011.

We must receive comments on this AD by May 16, 2011.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (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:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2011–0025–E, dated February 18, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

On two occurrences on Mystère-Falcon 50 aeroplanes in service, it was detected that two pipes had been swapped in maintenance at the frame 42 firewall. The swapped lines are the extinguishing system line to engine # 2, and engine # 2 Low Pressure (LP) bleed line.

If the swapping of these two lines is not detected and corrected, in case of engine #

2 fire, the fire extinguishing capability would not be operational.

For the reasons described above, this [EASA] AD requires an [visual] inspection of the connection of the two lines (extinguishing and LP bleed lines) at frame 42 in the rear compartment and, in case of findings, proper re-installation of the lines. This [EASA] AD requires as well reporting to Dassault Aviation.

This [EASA] AD is considered to be an interim measure and, depending on the inspection results provided by operators, further AD action may follow.

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

Relevant Service Information

Dassault Aviation has issued Service Bulletin F50–519, dated February 18, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the swapping of the number 2 engine fire extinguishing line and the number 2 engine low pressure bleed line results in a dormant failure of the fire extinguishing capabilities of the number 2 engine. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0261; Directorate Identifier 2011–NM–028–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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

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

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–07–11 Dassault Aviation: Amendment 39–16648. Docket No. FAA–2011–0261; Directorate Identifier 2011–NM–028–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Aviation Model Mystere-Falcon 50 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire protection.

Reason

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

On two occurrences on Mystre-Falcon 50 aeroplanes in service, it was detected that two pipes had been swapped in maintenance at the frame 42 firewall. The swapped lines are the extinguishing system line to engine # 2, and engine # 2 Low Pressure (LP) bleed line.

If the swapping of these two lines is not detected and corrected, in case of engine

2 fire, the fire extinguishing capability would not be operational.

* * * * *

Compliance

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

Actions

(g) Within 8 days after the effective date of this AD: Visually inspect the extinguishing system line and the low pressure bleed line of the number 2 engine at frame 42 in the rear compartment to determine proper installation of the lines, in accordance with paragraph 2.B.(1) of the Accomplishment Instructions of Dassault Service Bulletin F50–519, dated February 18, 2011.

(1) If the lines are properly installed, no further action is required by this paragraph.

(2) If the lines are improperly installed, before further flight, do the actions specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD, in accordance with paragraph 2.B.(1) of the Accomplishment Instructions of Dassault Service Bulletin F50–519, dated February 18, 2011.

(i) Inspect the improperly installed lines for deformation.

(A) If no deformation is found on the improperly installed lines, before further flight, re-install the lines using the proper connections, in accordance with paragraph 2.B.(1) of the Accomplishment Instructions of Dassault Service Bulletin F50–519, dated February 18, 2011.

(B) If any deformation is found on the improperly installed lines, before further flight, replace the lines in accordance with paragraph 2.B.(1) of the Accomplishment Instructions of Dassault Service Bulletin F50–519, dated February 18, 2011.

(ii) Verify the correct connection of the lines in accordance with paragraph 2.B.(1) of the Accomplishment Instructions of Dassault Service Bulletin F50–519, dated February 18, 2011.

Reporting Requirement

(h) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD to Dassault Aviation, as specified in paragraph 2.B.(2) of the Accomplishment Instructions of Dassault Service Bulletin F50–519, dated February 18, 2011. Submit the report at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the information identified in Dassault Service Bulletin F50–519, dated February 18, 2011. 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 contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency Emergency Airworthiness Directive 2011–0025–E, dated February 18, 2011; and Dassault Service Bulletin F50–519, dated February 18, 2011; for related information.

Material Incorporated by Reference

(k) You must use Dassault Service Bulletin F50–519, dated February 18, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

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

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

Issued in Renton, Washington, on March 21, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–7427 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1295; Directorate Identifier 2010–CE–060–AD; Amendment 39–16635; AD 2011–06–10]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. (Type Certificate Previously Held by The New Piper Aircraft, Inc.) Models PA–46–310P, PA–46–350P, and PA–46R–350T Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to certain Piper Aircraft, Inc. Models PA–46–310P and PA–46–350P airplanes that are equipped with a Lewis or Transicoil turbine inlet temperature (T.I.T.) gauge and associated probe. That AD currently requires cleaning, inspecting, and calibrating the T.I.T. system; replacing any T.I.T. system that fails the calibration test; repetitively replacing the T.I.T. probe on certain airplanes; and inserting a copy of the AD into the pilot's operating handbook (POH) for certain airplanes. This new AD retains

the actions required by the previous AD (AD 99–15–04 R1), adds certain Model PA–46R–350T airplanes to the Applicability section, expands the applicability to include other T.I.T. systems, and incorporates new service information. This AD was prompted by the manufacturer revising related service information and adding an airplane model to the list of affected airplanes. We are issuing this AD to prevent improper engine operation caused by improperly calibrated T.I.T. indicators or defective T.I.T. probes, which could result in engine damage/failure with consequent loss of control of the airplane.

DATES: This AD is effective May 6, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 6, 2011.

ADDRESSES: For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Darby Mirocha, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5573; fax: (404) 474–5605; e-mail: *darby.mirocha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 99–15–04 R1, Amendment 39–11747 (65 FR 33745, May 25, 2000). That AD applies to certain Piper Aircraft, Inc. (type certificate previously held by The New Piper Aircraft, Inc.) Models PA–46–310P and PA–46–350P airplanes that are equipped with a Lewis or Transicoil T.I.T. gauge and associated probe. The NPRM published in the **Federal Register** on December 30, 2010 (75 FR 82329). That NPRM proposed to continue to require cleaning, inspecting, and calibrating the T.I.T. system on certain airplanes; replacing any T.I.T. system that fails the inspection and calibration test; repetitively replacing the T.I.T. probe on certain airplanes; and inserting a copy of the AD into the pilot's operating handbook (POH). That NPRM also proposed to add certain Model PA–46R–350T airplanes to the Applicability section, expand the applicability to include other T.I.T. systems, and incorporate new service information.

Comments

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

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 898 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Clean and inspect the T.I.T gauge and probe for certain Models PA–46–310P and PA–46–350P airplanes.	1 work-hour × $85 per hour = $85	Not applicable	$85	$85 × 780 affected airplanes = $66,300.
Calibrate the T.I.T. gauge for certain Models PA–46–310P and PA–46–350P airplanes.	4 work-hours × $85 per hour = $340	Not applicable	340	340 × 427 affected airplanes = $145,180.
Incorporate emergency procedures into POH.	1 work-hour × $85 per hour = $85	Not applicable	85	85 × 898 affected airplanes = $76,330.

The requirements of this AD add no additional economic burden other than the addition of an airplane model to the Applicability section.

We estimate the following costs to do any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace probe	1 work-hour × $85 per hour = $85	$384	$469

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 99–15–04 R1, Amendment 39–11747 (65 FR 33745, May 25, 2000), and adding the following new AD:

2011–06–10 Piper Aircraft, Inc. (Type Certificate Previously Held by The New Piper Aircraft, Inc.): Amendment 39–16635; Docket No. FAA–2010–1295; Directorate Identifier 2010–CE–060–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 6, 2011.

Affected ADs

(b) This AD supersedes AD 99–15–04 R1, Amendment 39–11747.

Applicability

(c) This AD applies to the following Piper Aircraft, Inc. (type certificate previously held by The New Piper Aircraft, Inc.) Models PA–46–310P, PA–46–350P, and PA–46R–350T airplanes that are:

(1) Certificated in any category; and

(2) equipped with a turbine inlet temperature (T.I.T.) system identified in table 3 of this AD. Relief from this AD is available only if the gauge and probe are replaced through STC and not if a second T.I.T. gauge was installed while retaining the Lewis or Transicoil T.I.T. gauge and probe.

TABLE 1—GROUP 1 (AIRPLANES PREVIOUSLY AFFECTED BY AD 99–15–04 R1)

Models	Serial Numbers (S/N)
PA–46–310P (Malibu)	46–8408001 through 46–8608067 and 4608001 through 4608140.
PA–46–350P (Malibu Mirage)	4622001 through 4622200 and 4636001 through 4636020.

TABLE 2—GROUP 2 (AIRPLANES NOT PREVIOUSLY AFFECTED BY AD 99–15–04 R1)

Models	S/N
PA–46–350P (Malibu Mirage)	4636021 and subsequent.
PA–46R–350T (Matrix)	4692001 and subsequent.

TABLE 3—AFFECTED AIRPLANE MODELS AND CORRESPONDING AFFECTED TURBINE INLET TEMPERATURE (T.I.T.) SYSTEM

Models	S/N	Indication system P/N	Probe P/N
PA–46–310P	46–8408001 through 46–8608067 and 4608001 through 4608140.	Lewis T.I.T. analog indicators P/N 471–008.	471–009 or 481–387.
PA–46–350P	4622001 through 4622200 and 4636001 through 4636020.	Lewis T.I.T. analog indicators P/N 471–008.	481–389 or 481–392 or 686–216 (preferred).
PA–46–350P	4636021 through 4636374	Lewis T.I.T. digital indicators P/N 548–811.	481–389 or 481–392 or 686–216 (preferred).
PA–46–350P	4636375 and subsequent	Avidyne Entegra or other Electronic Flight Information System (EFIS) display.	686–216.
PA–46R–350T	4692001 and subsequent	Avidyne Entegra or other EFIS display.	686–216.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 77, Engine Indicating.

Unsafe Condition

(e) This AD was prompted by field reports that indicated service accuracy problems with the existing T.I.T. system on certain Models PA–46–310P, PA–46–350P, and PA–46R–350T airplanes. We are issuing this AD to prevent improper engine operation caused by improperly calibrated T.I.T. indicators or defective T.I.T. probes, which could result in engine damage/failure with consequent loss of control of the airplane.

Compliance

(f) For Group 1 airplanes: Comply with this AD within the compliance times specified, unless already done.

TABLE 4—GROUP 1 AIRPLANES (AIRPLANES PREVIOUSLY AFFECTED BY AD 99–15–04 R1)

Actions	Compliance	Procedures
(1) Clean and inspect the T.I.T. gauge and probe.	Within the next 100 hours time-in-service (TIS) after August 31, 1999 (the effective date retained from AD 99–15–04).	Follow Piper Airplane Maintenance Manual PA–46–310P/PA–46–350P, Part Number 761 783, Chapter 77, section 77–20–00 A.(1)(d), dated July 1, 1998; and Piper Airplane Maintenance Manual PA–46–350P/PA–46R–350T, Part Number 761 876, Chapter 77, section 77–20–00 1.C, page 1, dated August 28, 2007, and page 2, dated July 31, 2008, as applicable.
(2) Calibrate the T.I.T. system	Within the next 100 hours TIS after August 31, 1999 (the effective date retained from AD 99–15–04).	Follow Piper Airplane Maintenance Manual PA–46–310P/PA–46–350P, Part Number 761 783, Chapter 77, section 77–20–00 A.(1)(g), dated July 1, 1998; and Piper Airplane Maintenance Manual PA–46–350P/PA–46R–350T, Part Number 761 876, Chapter 77, section 77–20–00 1.F, page 2, dated July 31, 2008, and pages 3 and 4, dated August 28, 2007, as applicable; or Piper Service Bulletin No. 995C, dated November 17, 2009
(3) If the T.I.T. probe fails the inspection required in paragraph (f)(1) of this AD and/or the T.I.T. system indicator cannot be calibrated as required in paragraph (f)(2) of this AD, replace any failed parts with a serviceable part listed in table 3 of this AD as long as it has been inspected, passed the inspection, and been properly calibrated.	Before further flight after the cleaning and inspection required in paragraph (f)(1) and the calibration required in paragraph (f)(2) of this AD.	Follow Piper Airplane Maintenance Manual PA–46–310P/PA–46–350P, Part Number 761 783, Chapter 77, section 77–20–00 A.(1)(f), dated July 1, 1998; and Piper Airplane Maintenance Manual PA–46–350P/PA–46R–350T, Part Number 761 876, Chapter 77, section 77–20–00 1.E., page 2, dated July 31, 2008, as applicable; or Piper Service Bulletin No. 995C, dated November 17, 2009
(4) Incorporate the information from Appendix 1 and Appendix 2, as applicable, of this AD into the Emergency Procedures section of the pilot operating handbook (POH). This may be done by inserting a copy of this AD into the POH.	Within the next 100 hours TIS after August 31, 1999 (the effective date retained from AD 99–15–04).	Not applicable.
(5) Only install a part listed in table 3 of this AD after it has been inspected and properly calibrated.	As of July 28, 2000 (the effective date of AD 99–15–04 R1).	Not applicable.
(6) *Model PA–46–350P airplanes only:* Replace the T.I.T. probe with a new part number 481–389, 481–392, or 686–216 probe (preferred). This action is not required for Model PA–46–310P.	Upon accumulating 250 hours TIS on the currently installed T.I.T. probe or within the next 100 hours TIS after August 31, 1999 (the effective date retained from AD 99–15–04), whichever occurs later, and thereafter at intervals not to exceed 250 hours TIS.	*For serial numbers 4622001 through 4622200:* Follow Piper Airplane Maintenance Manual PA–46–310P/PA–46–350P, Part Number 761 783, Chapter 77, section 77–20–00 A.(1)(f), dated July 1, 1998; or Piper Service Bulletin No. 995C, dated November 17, 2009. *For serial numbers 4636001 through 4636020:* Follow Piper Airplane Maintenance Manual PA–46–350P/PA–46R–350T, Part Number 761 876, Chapter 77, section 77–20–00 1.E., page 2, dated July 31, 2008; or Piper Service Bulletin No. 995C, dated November 17, 2009.

(g) For Group 2 airplanes: Comply with this AD within the compliance times specified, unless already done.

TABLE 5—GROUP 2 AIRPLANES (AIRPLANES NOT PREVIOUSLY AFFECTED BY AD 99–15–04 R1)

Actions	Compliance	Procedures
(1) *Model PA–46–350P airplanes, S/Ns 4636021 through 4636374 only:* Clean and inspect the T.I.T. gauge and probe.	Within the next 100 hours TIS after the effective date of this AD.	Follow Piper Airplane Maintenance Manual PA–46–350P/PA–46R–350T, Part Number 761 876, Chapter 77, section 77–20–00 1.C, page 1, dated August 28, 2007, and page 2, dated July 31, 2008.
(2) *Model PA–46–350P airplanes, S/Ns 4636021 through 4636374 only:* If the T.I.T. probe fails the inspection required in paragraph (g)(1) of this AD, replace any failed parts with a serviceable part listed in table 3 of this AD as long as it has been inspected and has passed the inspection.	Before further flight after the cleaning and inspection required in paragraph (g)(1) of this AD.	Follow Piper Service Bulletin No. 995C, dated November 17, 2009.
(3) *All Group 2 airplanes:* Replace the T.I.T. probe with a new part number 686–216 probe.	Upon accumulating 250 hours TIS on the currently installed T.I.T. probe or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 250 hours TIS.	Piper Service Bulletin No. 995C, dated November 17, 2009.
(4) *All Group 2 airplanes:* Incorporate the information from Appendix 2 of this AD into the Emergency Procedures section of the POH. This may be done by inserting a copy of this AD into the POH.	Within the next 100 hours TIS after the effective date of this AD.	Not applicable.
(5) *All Group 2 airplanes:* Only install a part listed in table 3 of this AD after it has been inspected and properly calibrated.	As of the effective date of this AD	Not applicable.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Atlanta Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(3) AMOCs approved for AD 99–15–04 R1 are approved as AMOCs for this AD.

Related Information

(i) For more information about this AD, contact Darby Mirocha, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5573; fax: (404) 474–5605; e-mail: *darby.mirocha@faa.gov.*

Material Incorporated by Reference

(j) You must use the service information contained in Table 6 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 6—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Piper Service Bulletin No. 995C	N/A	November 17, 2009.
Piper Airplane Maintenance Manual PA–46–310P/PA–46–350P, Part Number 761 783, Chapter 77, "Engine Indicating," Section 77–20–00, pages 1 through 4.	N/A	July 1, 1998.
Piper Airplane Maintenance Manual PA–46–350P/PA–46R–350T, Part Number 761 876, Chapter 77, "Engine Indicating," Section 77–20–00, pages 1 through 4.	N/A	July 31, 2008. Section 77–20–00: pages 1, 3, and 4, dated August 28, 2007; page 2, dated July 31, 2008.

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

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.piper.com/home/pages/publications.cfm.*

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

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

Appendix 1 to AD 2011–06–10—Model PA–46–310P (Malibu); Emergency Procedures for the Pilot's Operating Handbook (POH)

(1) If the turbine inlet temperature indication fails or is suspected of failure during takeoff, climb, descent, or landing, maintain FULL RICH mixture to assure adequate fuel flow for engine cooling.

(2) If the turbine inlet temperature indication fails or is suspected of failure after cruise power has been set, maintain cruise power setting and lean to 6 gallons per hour (GPH) fuel flow above that specified in the Power Setting Table in Section 5 of the AFM/POH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

Appendix 2 to AD 2011–06–10—Model PA–46–350P (Malibu Mirage) and Model PA–46R–350T (Matrix); Emergency Procedures for the Pilot's Operating Handbook (POH)

(1) If the turbine inlet temperature indication fails or is suspected of failure during takeoff, climb, descent or landing, set power per the POH Section 5 Power Setting Table and then lean to the approximate POH Power Setting Table fuel flow plus 4 GPH.

(2) If the turbine inlet temperature indication fails or is suspected of failure after cruise power has been set, maintain the power setting and increase indicated fuel flow by 1 GPH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

Issued in Kansas City, Missouri, on March 9, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–7569 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0256; Directorate Identifier 2010–NM–114–AD; Amendment 39–16645; AD 2011–07–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–200 and –300 Series Airplanes

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

ACTION: Final rule; request for comments.

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

Two A340–300 aeroplanes experienced one single door opening of engine number (n°) 3 Thrust Reverser (TR) pivoting door during climb. These events were the result of a primary lock malfunction and incorrect engagement of the secondary lock.

* * * * *

Deployment of one TR door in flight, particularly during the take-off or go around, could result in heavy buffet at low speed, or could significantly reduce take off performance [and increase pilot workload during takeoff or go around], which would constitute an unsafe condition.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective April 18, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 18, 2011.

We must receive comments on this AD by May 16, 2011.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

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 2010–0044, dated March 17, 2010 [corrected March 25, 2010] (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Two A340–300 aeroplanes experienced one single door opening of engine number (n°) 3 Thrust Reverser (TR) pivoting door during climb. These events were the result of a primary lock malfunction and incorrect engagement of the secondary lock.

While investigations on root cause of these events were conducted, preventive actions have been required by EASA AD 2008–0074, AD 2009–0063 [which corresponds to FAA AD 2009–21–05, Amendment 39–16042] and AD 2009–0133.

The root cause has now been identified as being a combined failure of the thrust reverser pivoting door primary lock and actuator.

Deployment of one TR door in flight, particularly during the take-off or go around, could result in heavy buffet at low speed, or could significantly reduce take off performance [and increase pilot workload during takeoff or go around], which would constitute an unsafe condition.

Investigations have also identified that 10 TR pivoting doors of the 16 installed on each aeroplane may cause such effects. These are:

—Outboard engines (n° 1 and 4): all 4 pivoting doors of each engine.

—Inboard engines (n° 2 and 3): upper inboard pivoting door of each engine.

In order to reinforce the thrust reverser locking mechanism, this AD requires installation of a new modified primary lock and a new modified actuator on the 10 critical thrust reverser pivoting doors.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–78–4037, including Appendices 01 and 02, dated January 15, 2010; and Mandatory Service Bulletin A340–78–4038, Appendices 01 and 02, dated January 29, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–16645; Directorate Identifier 2010–NM–114–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–07–08 Airbus: Amendment 39–16645. Docket No. FAA–2011–0256; Directorate Identifier 2010–NM–114–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A340–211, –212, –213, –311, –312 and –313 airplanes; certificated in any category; all serial numbers.

Subject

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

Reason

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

Two A340–300 aeroplanes experienced one single door opening of engine number (n°) 3 Thrust Reverser (TR) pivoting door during climb. These events were the result of a primary lock malfunction and incorrect engagement of the secondary lock.

* * * * *

Deployment of one TR door in flight, particularly during the take-off or go around, could result in heavy buffet at low speed, or could significantly reduce take off performance [and increase pilot workload during takeoff or go around], which would constitute an unsafe condition.

* * * * *

Compliance

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

Actions

(g) Within 11 months after the effective date of this AD, on the upper inboard thrust reverser pivoting door of each engine, replace the primary lock with a new primary lock, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–78–4037, dated January 15, 2010; and remove the installed shim and replace the actuator with a new actuator, in accordance with Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–78–4038, dated January 29, 2010.

(h) Within 33 months after the effective date of this AD, on the upper outboard thrust reverser pivoting doors of both outboard engines, and on the lower thrust reverser pivoting doors (inboard and outboard) of both outboard engines, replace the primary lock with a new primary lock, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–78–4037, dated January 15, 2010; and remove the installed shim and replace the actuator with a new actuator, in accordance with Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–78–4038, dated January 29, 2010.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch ACO, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–227–1138; fax: 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2010–0044, dated March 17, 2010 [corrected March 25, 2010]; Airbus Mandatory Service Bulletin A340–78–4037, dated January 15, 2010; and Airbus Mandatory Service Bulletin A340–78–4038, dated January 29, 2010; for related information.

Material Incorporated by Reference

(k) You must use Airbus Mandatory Service Bulletin A340–78–4037, including Appendices 01 and 02, dated January 15, 2010; and Airbus Mandatory Service Bulletin A340–78–4038, including Appendices 01 and 02, dated January 29, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; e-mail: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on March 15, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–7220 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1209; Airspace Docket No. 10–ANM–10]

Amendment of Class E Airspace; West Yellowstone, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will modify Class E airspace at Yellowstone Airport, West Yellowstone, MT, to accommodate aircraft using Instrument Landing System (ILS) Localizer (LOC) standard instrument approach procedures at Yellowstone Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, June 30, 2011. 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On January 20, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at West Yellowstone, MT (76 FR 3569). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface, at Yellowstone Airport, to accommodate IFR aircraft executing ILS LOC standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. With the exception of an editorial change to the regulatory text, this rule is the same as that proposed in the NPRM.

The FAA has determined 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 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 discusses 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 creates additional controlled airspace at Yellowstone Airport, West Yellowstone, MT.

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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

ANM MT E5 West Yellowstone, MT [Amended]

West Yellowstone, Yellowstone Airport, MT (Lat. 44°41′18″ N., long. 111°07′04″ W.)

That airspace extending upward from 700 feet above the surface within 4.3 miles west and 8.3 miles east of the 026° and 206° bearings of the Yellowstone Airport extending from 8.3 miles northeast to 23.3 miles southwest of the Yellowstone Airport; that airspace extending upward from 1,200 feet above the surface within 6.6 miles west and 11 miles east of the 209° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. extending to 36.2 miles southwest, and within 5 miles north and 4.3 miles south of the 304° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. extending to the east edge of V–343; that airspace extending upward from 10,700 feet MSL within a 25.3-mile radius of lat. 44°34′32″ N., long. 111°11′51″ W. extending clockwise from the 081° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. to 4.3 miles east of the 236° bearing from lat. 44°34′32″ N., long. 111°11′51″ W.; and within 4.3 miles each side of the 236° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. extending to 43.5 miles southwest; that airspace extending upward from 10,700 feet MSL within 9 miles south and 5 miles north of the 304° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. extending to the east edge of V–343; that airspace extending upward from 12,000 feet MSL within a 30.5-mile radius of lat. 44°34′32″ N., long. 111°11′51″ W. extending clockwise from the 026° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. to the 081° bearing from lat. 44°34′32″ N., long. 111°11′51″ W.; that airspace extending upward from 12,500 feet MSL within 4.3 miles each side of the 293°, 329° and 043° bearing from lat. 45°00′19″ N., long. 110°53′49″ W. extending to 25.16 miles west to 30.57 miles northwest to 54.24 miles north, and within 4.3 miles each side of the 312° bearing from lat. 44°31′10″ N., long. 111°14′03″ W. extending to 25.20 miles northwest, excluding those portions that overlie the east edge of V–343, and south edge of V–2 and V–86; that airspace extending upward from 13,000 feet MSL within a 30.5-mile radius of lat. 44°34′32″ N., long. 111°11′51″ W.; extending clockwise from the 313° bearing to the 026° bearing from lat. 44°34′32″ N., long. 111°11′51″ W.

Issued in Seattle, Washington, on March 21, 2011.

Christine Mellon,

Acting Manager, Operations Support Group, Western Service Center

[FR Doc. 2011–7600 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1233; Airspace Docket No. 10–AWP–21]

Establishment of Class E Airspace; Kahului, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Kahului Airport, Kahului, HI, to accommodate aircraft using Area Navigation (RNAV) standard instrument approach procedures at Kahului Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, June 30, 2011. 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On January 20, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Kahului, HI (76 FR 3571). 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 6002 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E surface airspace, at Kahului Airport, to accommodate IFR aircraft executing the RNAV standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined 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 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 discusses 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 establishes additional controlled airspace at Kahului Airport, Kahului, HI.

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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AWP HI E2 Kahului, HI [New]

Kahului Airport, HI
(Lat. 20°53′55″ N., long. 156°25′50″ W.)

That airspace extending upward from the surface within a 5-mile radius of the Kahului 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, Pacific Chart Supplement.

Issued in Seattle, Washington, on March 21, 2011.

Christine Mellon,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–7601 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1340

[Docket No. NHTSA–2010–0002]

RIN 2127–AK41

Uniform Criteria for State Observational Surveys of Seat Belt Use

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This Final Rule amends the regulation establishing uniform criteria for designing and conducting State seat belt use observational surveys and the procedures for obtaining NHTSA approval of survey designs, and provides a new form for reporting seat belt use rates to NHTSA. Since the adoption of the Uniform Criteria in 1998, NHTSA and the States have accumulated substantial experience in the design and implementation of seat belt use surveys. This experience has provided insight into factors that could affect survey accuracy and reliability. In addition, technological improvements in road inventories have made it possible to select observation sites that are more representative of the road segments in the State in a more cost effective manner. For these reasons, NHTSA is revising the Uniform Criteria so that future surveys will give States more accurate data to guide their occupant protection programs.

DATES: This Final Rule becomes effective on May 2, 2011.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Jack Oates, Chief, Program Implementation, Regional Operations and Program Delivery, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–200, Washington, DC 20590. Telephone number: 202–366–2730; E-mail: *Jack.Oates@dot.gov.*

For statistical issues: Dr. Chou-Lin Chen, Chief, Mathematical Analysis Division, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NVS–421, Washington, DC 20590. Telephone number: 202–366–1048; E-mail: *Chou-Lin.Chen@dot.gov.*

For legal issues: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NCC–113, Washington, DC 20590. Telephone number: 202–366–1834; E-mail: *Jin.Kim@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Notice of Proposed Rulemaking
III. Comments
  A. In General
  B. General Cost
  C. Definitions
  D. Selection of Observation Sites
  E. Assignment of Observation Times
  F. Observation Procedures
  G. Quality Control
  H. Computation of Estimates
  I. Submission and Approval of Seat Belt Survey Design
  J. Re-Selection of Observation Sites
  K. Annual Reporting Requirements
IV. Statutory Basis for This Action
V. Regulatory Analyses and Notices
  A. Executive Order 12866 and Regulatory Policies and Procedures
  B. Regulatory Flexibility Act
  C. Executive Order 13132 (Federalism)
  D. Executive Order 12988 (Civil Justice Reform)
  E. Paperwork Reduction Act
  F. Unfunded Mandates Reform Act
  G. National Environmental Policy Act
  H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)
  I. Regulatory Identifier Number (RIN)
  J. Privacy Act
  K. Congressional Review of Agency Rulemaking

I. Background

Section 1403 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) authorized a seat belt incentive grant program that awarded grant funds to States based on a State's seat belt use rate. On September 1, 1998, the National Highway Traffic Safety Administration (NHTSA) published as an interim final rule the criteria to ensure accurate and representative measurements of a State's seat belt use rate, known as the Uniform Criteria for State Observational Surveys of Seat Belt Use (the Uniform Criteria). *See* 63 FR 46389. On March 14, 2000, NHTSA published a Final Rule, adopting the Uniform Criteria with one clarifying change.[1] *See* 65 FR 13679.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59), enacted on August 10, 2005, did not reauthorize the seat belt incentive grant program. However, SAFETEA–LU established new administrative requirements relating to a State's qualification for a highway safety grant under 23 U.S.C. 402. One such requirement is that the State must provide satisfactory assurances that it will conduct an annual Statewide seat belt use survey in accordance with the criteria for State seat belt use rate measurement established by the Secretary of Transportation.[2] In August 2005, NHTSA notified the States and Territories that the Statewide surveys conducted in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, as published at 23 CFR part 1340, would satisfy the administrative requirements of Section 402. In addition, the implementing guidelines for the safety belt performance grant program under 23 U.S.C. 406 provide that seat belt use surveys conducted in accordance with the Uniform Criteria serve as the basis for an award under the seat belt

[1] In 2000, NHTSA clarified that States are permitted to "cluster sample," i.e., group observation sites according to geographic areas to minimize travel time and distance required to conduct the observations.

[2] 49 CFR 1.50 (delegation of authority to Administrator of National Highway Traffic Safety Administration).

performance provisions of that grant program.

Since the adoption of the Uniform Criteria in 1998, NHTSA and the States have accumulated substantial experience in the design and implementation of seat belt use surveys. This experience has provided insight into factors that could affect survey accuracy and reliability. In addition, technological improvements in road inventories have made it possible to select observation sites that are more representative of the road segments in the State in a more cost effective manner. For these reasons, NHTSA proposed to revise the Uniform Criteria so that future surveys would give States more accurate data to guide their occupant protection programs.

II. Notice of Proposed Rulemaking

On January 28, 2010, NHTSA published a notice of proposed rulemaking (NPRM) to amend the Uniform Criteria. *See* 75 FR 4509. NHTSA proposed several key changes to the 1998 Uniform Criteria. In particular, the agency proposed to revise the geographic coverage of the sampling frame from the population-based exclusion criterion to a fatality-based exclusion criterion and to identify the road types that are required to be included in a State's sampling frame. The proposal also changed the precision requirement from a five percent relative error to a 2.5 percentage point standard error. In addition, the agency proposed quality control procedures, such as quality control monitors, training and statistical review, to help ensure accuracy and consistency across all State surveys. Finally, the agency proposed submission of additional information from the survey results as part of a State's annual certification, including the data source of the sampling frame, exclusions applied to the sampling frame, procedures for collecting additional data to reduce the nonresponse rates, explanation of any imputation methods, procedures to adjust the sampling weight, and procedures to be followed if the standard error is exceeded.

III. Comments

By the close of the comment period on March 29, 2010, the agency received submissions from 27 commenters in response to the NPRM. Commenters included the following State agencies: California Office of Traffic Safety (CA OTS), Colorado Department of Transportation (CO DOT), Idaho Transportation Department (ID DOT), Illinois Department of Transportation (IL DOT), Iowa Governor's Traffic Safety Bureau—Department of Public Safety (IA TSB), Kansas Department of Transportation (KS DOT), Louisiana Highway Safety Commission—Department of Public Safety and Corrections (LA HSC), Maine Bureau of Highway Safety (ME DPSC), Missouri Highway Safety Division—Department of Transportation (MO DOT), Nevada Department of Public Safety (prepared by University of Nevada—Las Vegas) (NV DPS), New Hampshire Highway Safety Agency (NH HSA), New York Governor's Traffic Safety Committee—Department of Motor Vehicles (NY TSC), North Dakota Department of Transportation (ND DOT), Oregon Department of Transportation (OR DOT), Pennsylvania Department of Transportation (PA DOT), Texas Department of Transportation (TX DOT), Washington Traffic Safety Commission (WA TSC), West Virginia Governor's Highway Safety Program (WV HSP), Wisconsin Division of State Patrol, Bureau of Transportation Safety—Department of Transportation (WI State Patrol), Wyoming Highway Safety Program—Department of Transportation (WY HSP). Additional commenters included two associations—Governor's Highway Safety Association (GHSA) and International Association of Chiefs of Police (IACP); three professors and staff—Mississippi State University (MS State Univ.), New Jersey Institute of Technology (NJIT) and Old Dominion University (ODU); one consultant to a State—Peters and Associates Engineers Inc. (Peters & Assoc.); and one interested member of the public.

A. In General

Several commenters expressed general support for revising the criteria. These commenters stated that the changes to the protocol are appropriate and timely and will enhance the accuracy and consistency of seat belt use surveys. (*E.g.,* GHSA at 1; WI State Patrol at 1; WA TSC at 1; TX DOT at 1; CA OTS at 1. *See also* NV DPS at 9; ODU at 1.) In addition to expressing general support for revising the criteria, these commenters also had more specific comments regarding different aspects of the proposal. The agency addresses these comments below under the appropriate heading.

Some commenters expressed general concern with revising the Uniform Criteria. One commenter suggested reducing the frequency of State observational surveys, and one commenter suggested expanding the National Occupant Protection Use Survey (NOPUS) to each State instead of requiring States to conduct independent surveys. (WI State Patrol at 1; CO DOT at 1.) We decline to adopt these commenters' suggestions as Section 402 requires each State to provide assurances that it will conduct annual Statewide seat belt use surveys in accordance with the Uniform Criteria to ensure that the measurements are accurate and representative.

One commenter believed that changing the survey criteria at the end of the authorization was not cost effective unless a seat belt incentive program formed a part of the future authorization. (LA HSC at 1.) In the NPRM, we stated that the purpose of revising the criteria was to improve the accuracy and reliability of surveys conducted by States. We believe it is necessary to do so now based on our experience reviewing State survey results. Regardless of whether a seat belt incentive program is part of a future authorization, improved data will enable States to guide their highway safety program evaluation and program management more effectively now.

The NH HSA stated that the most significant effect of the proposed change would be damage to trend information. (NH HSA 1.) The commenter further stated that policy analysis based on previous methodology would no longer be relevant as a tool to measure seat belt usage. *Id.* For some States, seat belt use rate estimates obtained from a survey meeting the new criteria may depart from the trend of survey outcomes in recent years. However, any departure from the trend will reflect the fact that the data will be more accurate and more reliable. Specifically, observation sites will be drawn from a more up-to-date and comprehensive road inventory. The seat belt survey will also be less biased toward urban areas due to the shift from a population-based exclusion to a fatality-based exclusion. (*See* discussion in Section III.D.1 below.) Finally, the survey will have greater precision due to the shift from a five percent relative error to a 2.5 percentage point standard error. (*See* discuss in Section III.D.5 below.) NHTSA believes that the need for more accurate and reliable data outweighs concerns about departure from trends reflected under the 1998 Uniform Criteria.

The CO DOT stated that the proposal did not address the large gap in data through lack of nighttime observations. (CO DOT at 1.) As we stated in the NPRM, although nighttime observations of seat belt use may provide States with useful data, the agency believes that several factors weigh against extending the sampling requirements. First, extending the sampling requirement to nighttime observations would reduce

the value, for comparison purposes, of survey results from previous years' data. States and other interested parties use this information to determine the impact of various seat belt use programs and activities. In addition, seat belt use is difficult to reliably observe in the dark, even in the most well-lit areas. Nighttime observations are also less safe for data collectors than daytime observations because data collectors are less conspicuous and exposed to an increased presence of impaired drivers. For these reasons, the agency declines to change the rule in response to this comment.

The LA HSC suggested that traffic cameras positioned in predetermined locations will provide higher data quality at a fraction of the costs of manual collection and will reduce exposure of data collectors to highway hazards. (LA HSC at 1.) The Uniform Criteria do not prohibit States from using traffic cameras to conduct seat belt use observations. However, States must still comply with the other provisions of the Uniform Criteria, such as observation procedures (§ 1340.7) and quality control (§ 1340.8). With this clarification, no change is made to the rule.

The OR DOT suggested that States should be allowed to continue using their current survey methodology but adjust sampling to re-weight observation sites using the proposed fatality-based criterion. (OR DOT at 2.) Much of the survey methodology in the revised criteria is a clarification of the 1998 Uniform Criteria. The major change for most States will be in the sampling frame—changing from a population-based exclusion of counties to a fatality-based exclusion of counties and an updated road inventory. Because of this change, we expect that the large majority of States will have to re-select a probability sample of observation sites. However, some States already may be in close compliance with the revised criteria and may not need to make significant changes to their current survey design.

NHTSA received four comments requesting additional guidance. The IACP and WV HSP requested greater guidance and technical assistance on conducting surveys, including common data collection procedures and approaches for calculation of sampling error estimates. (IACP at 1; WV HSP at 2.) The OR DOT and NV DPS requested a sample of an acceptable survey design for States. (OR DOT at 2; NV DPS at 7.) The agency intends to provide technical assistance, such as providing county-by-county breakdowns of passenger motor vehicle occupant fatalities and an inventory of roads. In addition, NHTSA is developing a sample of an acceptable survey design to assist the States' redesign efforts. This sample design will provide general guidance for designing a seat belt use survey, including the calculation of survey standard error. However, the Final Rule still requires States to rely on their own statistician to design, conduct and analyze the data. As we discuss in Section III.G below, the purpose of requiring statistician involvement is to ensure that both the survey design and the annual reporting of seat belt use rates are carried out in a methodologically-sound manner. No change to the Final Rule is made in response to these comments.

Two commenters mentioned a "self-report survey" and a "public opinion survey" as further increasing costs to the States. (IACP at 2; CO DOT at 1.) We believe the commenters are referring to the annual public opinion survey that States voluntarily agreed to conduct and report on as part of their core highway safety program performance measures. We note that the public opinion survey is not mandatory and not related to the seat belt survey criteria. Therefore, we do not address these comments here.

The OR DOT stated that the revised criteria require new performance measures. (OR DOT at 2.) The revised criteria do not impose a performance measure—States are not required to meet a specific seat belt use rate. Rather States are required to conduct surveys that are consistent with the revised criteria so that seat belt use rate estimates are more accurate and reliable.

The agency received more specific comments regarding different aspects of the proposal, including requests for clarification and recommendations to change the proposal. The agency addresses these comments below under the appropriate heading.

B. General Cost

One interested member of the public stated that conducting such surveys is a waste of taxpayer's money. (Jean Public at 1.) As discussed in Section III.A. above, States are required by statute to provide assurances that it will conduct annual Statewide seat belt use surveys in accordance with the Uniform Criteria to ensure that the measurements are accurate and representative. *See* 23 U.S.C. 402.

A number of commenters expressed general concerns regarding increased costs as a result of the revised Uniform Criteria, especially related to the number of observation sites, and the requirements for quality control monitoring and additional observations as a result of nonresponse rates. (WA TSC at 4; OR DOT at 2; IACP at 2; ID DOT at 1; WY HSP at 1; LA HSC at 1; NJIT at 3; CO DOT at 1; GHSA at 1; ODU at 1–2; MO DOT at 1; CA OTS at 1.) Some of these commenters stated that the additional costs would divert resources away from other programs. (CO DOT at 1; LA HSC at 1; GHSA at 1; ID DOT at 1.) NHTSA understands that the new criteria may impose additional costs for some States, especially States that will need to conduct observations in more counties and at more observation sites. Based on our review of the changes required under the new criteria and States' current seat belt use surveys approved under the 1998 Uniform Criteria, we do not believe that this will significantly increase costs for most States.[3] However, the changes to the Uniform Criteria will yield better data, and this will improve the States' identification of low seat belt use problem areas and permit more effective targeting of countermeasures to increase seat belt use. Accordingly, States will be able to target their life-saving programs more effectively, resulting in fewer fatalities. For these reasons, we believe that the improved quality and reliability of the survey outweighs the additional costs.

Several commenters suggested that NHTSA provide additional funding to assist States or that NHTSA redesign 56 surveys and analyze the data from those surveys. (ODU at 1–2; MO DOT at 2; WA TSC at 2, 4.) Although NHTSA intends to provide technical assistance to States, including a road inventory and a fatality distribution, NHTSA does not have the resources to provide States with additional funds, and NHTSA does not have the resources to redesign all 56 surveys and analyze the data. Currently, all States receive NHTSA grant funds, such as Section 402 program funds (23 U.S.C. 402), which may be used to design and conduct surveys and analyze data. States may also use other grant funds, such as Section 406 program funds (23 U.S.C. 406), to redesign and

[3] The WA TSC stated that the revised criteria will substantially increase its costs, up to $100,000 the first year. (WA TSC at 1, 4.) NHTSA does not believe that many, if any, States will incur costs of $100,000 to redesign the survey. Based on our estimate, we expect that many States will spend tens of thousands of dollars to redesign the survey. The CA OTS stated that it expected increased costs due to a 50 percent increase in the number of survey sites. (CA OTS at 1. *See also* MO DOT at 1.) It is not clear how CA OTS determined that it would need a 50 percent increase in the number of observation sites under the new criteria. Because we have revised the survey criteria in order to provide States with design flexibility, we believe that CA OTS would not need a 50 percent increase in the number of observation sites and suggest California and other States consult its statistician for survey design alternatives. (*See* discussion in Section III.D.1 below.)

conduct surveys. Consequently, NHTSA declines to adopt these commenters' suggestion.

C. Definitions (§ 1340.3)

GHSA asked for an explanation of the source of roadway-related definitions. (GHSA at 1.) The agency relied on the U.S. Census Bureau's TIGER/Line files, Second Edition (2006) for the definition of most of the roadway-related terms. Specifically, the definition for access ramp, cul-de-sac, vehicular trail, service drive, and traffic circle comes from the TIGER/Line files. The TIGER/Line files are typically used in conjunction with geographic information system (GIS), or similar, software. Because the database of road segments that NHTSA will provide to States will be the GIS population of roads, we relied on the definitions used in the TIGER/Line files. The other two terms (nonpublic road and unnamed road) are not defined in the TIGER/Line files, but are defined to reflect a common understanding of these terms.

The TX DOT asked whether the definition of passenger motor vehicle included limousines and other for-hire vehicles, whether a pickup truck included a wrecker tow vehicle, a flatbed 3 or 4 ton truck or a utility service truck, and whether a van included any size or type a van. (TX DOT at 3.) In the NPRM, passenger motor vehicle was defined as "a passenger car, a pickup truck, van, minivan or sport utility vehicle." Generally, most passenger cars, pickup trucks, vans, minivans and sport utility vehicles (SUVs) are motor vehicles with a gross vehicle weight rating (GVWR) of less than 10,000 pounds (lbs). In the proposal, NHTSA intended those vehicles with a GVWR of under 10,000 lbs to be included in the seat belt use survey. To clarify this point and in response to this comment, we amended the definition of "passenger motor vehicle" to read as follows: "A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds, including a passenger car, pickup truck, van, minivan or sport utility vehicle." Accordingly, those vehicles, including limousines, for-hire vehicles, wrecker tow vehicles, flatbed 3 or 4 ton trucks, utility service trucks and vans that are under 10,000 lbs GVWR must be included in the seat belt use survey.

D. Selection of Observation Sites (§ 1340.5)

1. Sampling Frame: Exclusion

The agency received many comments regarding the sampling frame requirements. It appears that most of these comments reflect a misunderstanding of the sampling frame requirements. Much of this misunderstanding appears to stem from the fatality-based exclusion at the county level, as specified in § 1340.5(a). (*E.g.,* ID DOT at 1; Peters & Assoc. at 1–2; IA TSB at 1; MS State Univ. at 1; ND Dot at 1; NV DPS at 5; OR DOT at 1; PA DOT at 1; TX DOT at 1; WA TSC at 4–5; WV HSP at 1–2; WY HSP at 1; NH HSA at 1.) Many commenters mistakenly referred to a "fatality-based survey" or a "fatality-based criterion". (*E.g.,* Peters & Assoc. at 1–2; GHSA at 2; IA TSB at 1; NV DPS at 5.) For example, one commenter stated that the switch from a population-based to a fatality-based seat belt survey is flawed and will produce far less representative results of actual safety belt use for a number of reasons: (1) The location of fatalities is not necessarily representative of where people live, work and drive; (2) fatal crashes are not representative of where injury crashes occur and not representative of where property damage crashes occur; and (3) a fatality-based survey is not representative of exposure or population, which are two critical components of a measurement of seat belt use. (IA TSB at 1.) Some commenters asked how site selection can be based on both a fatality and county-by-county basis. (*E.g.,* OR DOT at 1; Peters & Assoc. at 1.) We believe that these comments capture the general misunderstanding among commenters regarding the fatality-based exclusion.

As a general matter, in a survey that covers a large geographic area, such as a Statewide seat belt use survey, it may be costly to send data collectors to a random sample of observation sites across the large geographic area. To reduce travel costs and time of collection, the large geographic area is divided into subareas, or primary sampling units, and a sample of these primary sampling units is selected. Data are then collected within these primary sampling units. For Statewide seat belt use surveys, the large geographic area is the State itself, and the primary sampling units are counties (or county equivalents). Because States believed that the costs were too great to send data collectors to a randomly selected sample of observation sites across the State, in the 1998 Uniform Criteria, NHTSA allowed the State to select a probability-based sample of its counties and then to select observation sites within the selected counties in which to count seat belt use observations. The selection of counties is called the first stage of the sample. A number of States had many small counties with little population and road traffic. Thus, the 1998 Uniform Criteria allowed States to exclude the smallest counties with a cumulative 15 percent of the population from the first stage sampling frame, i.e., a population-based exclusion.

Over time, NHTSA became aware that some small counties had measurable road traffic because they contained major roads. The traffic on these roads resulted in a disproportionate share of the motor vehicle related fatalities compared to the population of the county. This circumstance was the basis for NHTSA's proposal to change the exclusion criteria in the revised criteria from a population-based exclusion to a fatality-based exclusion in the first stage sampling frame. With this change, counties that have few fatalities may be excluded from the seat belt survey. We note, however, States are not required to exclude counties from the sampling frame, and may include and sample randomly from all counties. (*See* KS DOT at 1.) Accordingly, under the new criteria, the State may identify any set of counties that collectively account for 15 percent of the State's passenger motor vehicle occupant fatalities, and that set of counties may be excluded from the first stage sampling frame.

The main purpose for allowing any exclusion, whether fatality-based or population-based, is to control operational costs. As explained above, the purpose of the exclusion is to help States reduce travel costs and time of collection by excluding areas where little data are likely to be collected. The fatality-based exclusion does not directly affect the selection of the actual observation sites within eligible counties. In other words, neither the number of fatalities in a county nor the specific locations where those fatalities occurred should serve as the basis for selecting the observation sites. (*See* LA HSC at 2.)

Some commenters stated that shifting from a sampling frame of counties accounting for at least 85 percent of the Statewide population to one that includes at least 85 percent of the passenger vehicle occupant fatalities seems to replace a potentially biased sampling frame with one that is almost certainly biased. (*E.g.,* WA TSC at 1–2; GHSA at 1–2. *See also* IACP at 2; NV DPS at 2, 4; ODU at 2; NJIT at 1–2.) NHTSA believes that, by permitting the systematic exclusion of the State's most sparsely populated counties from the sampling frame, the 1998 Uniform Criteria created an urban bias. While we are not eliminating the urban bias, we believe we are reducing it in many States by replacing the population-based

exclusion with the fatality-based exclusion. For some States, the change to a fatality-based exclusion may not have any impact on the sampling frame. For example, under a population-based exclusion, States systematically set aside sparsely populated counties from the sampling frame. Therefore, States end up with more urban areas in the first stage sampling frame. A fatality-based exclusion is less urban-biased with respect to seat belt use because States are not systematically eliminating all low population areas, but are required to include those low population counties which have enough fatalities to be included in the sampling frame. It is not uncommon in many States for a sparsely populated county to have high traffic volume, sometimes resulting in relatively frequent crashes and deaths. A population-based exclusion may eliminate that county while a fatality-based exclusion may keep that county in the sampling frame.

Other variables, such as crash or fatality rates, registered vehicles, vehicle miles traveled (VMT), could be used as the basis for excluding counties from the sampling frame. (*See* MS State Univ. at 1.) NHTSA decided to use passenger vehicle occupant fatalities in motor vehicle crashes as the measure because these other measures are similar to population and would result in a similar urban bias. For example, vehicle registrations likely are closely correlated with population so that a registration-based exclusion probably would produce the same urban bias as the current population-based exclusion. On the other hand, VMT or VMT-based crash or fatality rates could be used to exclude counties in a way that would avoid an urban bias. However, many States do not have accurate counts of VMT for all counties. For this reason, NHTSA believes that allowing fatality-based exclusion of counties is the preferred method of balancing survey efficiency and cost considerations while continuing to ensure a representative sample. Therefore, no change is made in response to these comments.

One commenter stated that it is likely that oversampling and overweighting the observations in rural counties with high fatality rates and low belt use rates will erroneously depress the State's seat belt use rate in an attempt to focus attention on problem areas. (WA TSC at 2.) The fatality-based exclusion is not an attempt to focus on problem areas. Rather, as discussed above, its intent is to help reduce the current urban bias and ensure that seat belt use rate estimates are more representative. We note that oversampling need not lead to overweighting if the weight is calculated properly. In our opinion, properly weighted observations will not introduce error into the Statewide seat belt use rate estimate.

Commenters expressed concern that the fatality-based exclusion would result in additional counties being included in the sampling frame, especially in more rural areas. (NJIT at 1; WA TSC at 2; WY HSP at 1; MO DOT at 1; ND DOT at 1; GHSA at 2.) For example, the MO DOT stated that the "fatality based sampling frame" will result in 62 counties and 1,426 observation sites being included in the sampling frame when the State's current sampling frame includes 20 counties and 460 observation sites. (MO DOT at 1. *See also* CA OTS at 1.) We note that when more counties are in a sampling frame, more counties are eligible for selection, but this does not necessarily mean that more counties will be selected. Although it is not clear how the MO DOT estimated the number of counties and observation sites, we believe that the estimate may be a result of a misunderstanding of the fatality-based exclusion as discussed above, and we do not expect that Missouri or any State would be required to more than triple the number of observation sites at which it collects data. Some States will need to increase the number of counties included in their county sampling frame. This may result in an increase in the number of counties selected in the first stage of their sample, which, in turn, may impose additional costs for these States. However, we do not believe it would approach the magnitude described by MO DOT. Based on our review of current seat belt survey designs, we do not believe that change to a fatality-based exclusion will significantly increase costs in most States. Because these new Uniform Criteria were designed to give States flexibility in designing seat belt use surveys, States should work with their survey statisticians to develop a design that best meets their needs and circumstances.

Some commenters stated that the shift to a fatality-based exclusion may impact low population States, where fewer motor vehicle fatalities occur, and suggested that five years of fatality data should be averaged. (ND DOT at 1; ME DPSC at 1; WY HSP at 1; NH HSA at 1.) We recognize that in small rural States, there can be sharp annual fluctuations in the numbers and distribution of fatalities. Accordingly, after careful consideration, we have decided to amend the rule to allow States the option to average three, four or five years of FARS data to determine passenger vehicle occupant fatalities. We believe that allowing States this flexibility will reduce the potentially disproportionate impact of any single multi-fatality crash in any given year. Accordingly, we have amended the rule in response to these comments.

Several States asked for clarification about the kinds of fatalities that are to be counted for the fatality-based exclusion. Two commenters asked for clarification about which occupants and which vehicles counted in the fatality-based exclusion. (OR DOT at 1; WV HSP at 1.) Two commenters suggested that the sampling frame should be limited to unrestrained fatalities. (NY TSC at 1–2; PA DOT at 1.) To clarify, the county-by-county fatality counts that will be used to identify counties that may be excluded from the sampling frame will be based on passenger motor vehicle occupant fatalities only (and not on commercial vehicle occupant, motorcycle, bicycle or pedestrian fatalities) that occur in each county on roads to which the public has the right of vehicular access. We recognize that counts of unrestrained fatalities could be used as the basis for determining which counties may be excluded from the sampling frame. However, especially in sparsely populated States with relatively low fatality totals, the counts of unrestrained fatalities even when using three, four or five year totals may produce unstable distributions. For consistency, NHTSA believes that all States should use counts of all passenger motor vehicle fatalities to determine which counties may be excluded from the sampling frame. As noted before, the purpose of the fatality exclusion is not to direct data collection to specific locations of fatalities but to reduce the bias toward urban areas. The agency declines to adopt these commenters' suggestions.

The LA HSC commented that if crashes are used in lieu of population as a factor in determining site location, States should be permitted to account for serious injury crash data. (LA HSC at 2.) Another commenter recommended that the rule be changed to measure "fatal crashes" instead of "crash fatalities." (IACP at 1.) As stated above, neither the number of fatalities in a county nor the specific locations where those fatalities occurred is a factor in selecting the actual observation sites. The fatality counts are used solely to determine which counties a State may exclude from its sampling frame in order to control operational costs. NHTSA believes that fatality counts serve as an adequate basis for that determination. We do not believe that counts of serious injuries or of fatal crashes (in lieu of crash fatalities) would

provide additional value in the identification of counties that may be excluded from the sampling frame. We decline to change the rule in response to these comments.

One commenter asked if day and night differences in fatalities will be considered in selecting observation sites. (NV DPS at 4.) As noted above, we believe that the commenter misunderstood the purpose of the fatality-based exclusion. The actual fatalities do not determine where the observation sites are located. Rather, the three-, four- or five-year fatality counts will be used to allow the State to exclude counties that make up 15 percent of the State's passenger vehicle occupant fatalities. Both day and night passenger vehicle occupant fatalities will be counted in determining the fatality counts. With this clarification, no change to the rule is made.

One State asked if States could have the option to use their own non-FARS fatality data because the most recent FARS data are often less current than State's own traffic fatality counts. (WI State Patrol at 1.) In the preamble to the NPRM, NHTSA stated that the agency would provide States with county-by-county passenger motor vehicle occupant fatality counts for the relevant time period. We believe that allowing States to use their own fatality data would have little or no impact on defining the State's sampling frame. After careful consideration, we have decided to allow States the option to use the NHTSA-provided fatality data or their own fatality data for the most recent three, four or five years, provided that the State fatality data reflect the FARS definitions and are approved by NHTSA. We have revised the Final Rule accordingly.

One commenter stated that under the existing rule, the population and average VMT based sampling criteria took into account an "infinite sample size," but with the proposed fatality-based sampling, "the fatalities become the universe." (NV DPS at 4.) The commenter further stated that the statistical concepts related to the "central limit theorem" and the "normal distribution" might lose their "essence," and that we cannot derive statistical results. *Id.* The commenter asked if it was necessary to look into the "finite population theory for sampling."

This commenter appears to assume, incorrectly, a change from population-based exclusion to fatality-based exclusion, in which the central limit theorem (which states that as the sample size becomes larger, the sample mean will have an approximately normal distribution) would cease to have applicability because the sample size would be finite. As discussed above, the proposal did not change to fatality-based exclusion. It changed only the way counties are excluded from the sampling frame. In other words, the proposal did not require observations to be conducted at locations of fatal crashes. In fact, locations of fatal crashes should not serve as the basis for selecting actual observation sites. Under both the 1998 Uniform Criteria and the proposal, both population and sample sizes are finite, not infinite. This does not mean that the central limit theorem cannot be applied to the seat belt use rate estimate. In a seat belt use survey, the sample mean is the estimated seat belt use rate. As the sample size in a State's seat belt use survey becomes large enough, the central limit theorem would still be valid, i.e., the estimated seat belt use rate will have an approximately normal distribution.

Several commenters stated that the change from a population-based exclusion to a fatality-based exclusion would make it difficult for States to compare the seat belt survey results to previous years' estimates. (NY TSC at 1; PA DOT at 1; GHSA at 2; IA TSB at 1; TX DOT at 2. *See* discussion in Section III.A above.) While the change in the sampling frame exclusion may make comparing estimates from previous years more challenging, we believe that the data still remains valuable. The new seat belt use rate estimates will be more representative of the actual seat belt use rate in the State than previous estimates. We believe that the need for more accurate and reliable data outweighs the challenges in comparing survey results. (As noted above, this is not a change from a population-based survey to fatality-based survey. Rather, the change only affects the exclusion from the sampling frame that is allowed for controlling operational costs.)

2. Sampling Frame: Database of Roads

Some commenters supported the requirement that the database of road inventories includes all roads with a few exceptions, and agreed that NHTSA should provide the database to the States. (WA TSC at 3; Peters & Assoc. at 2; NV DPS at 6.) Two commenters requested more specific information about the database of road inventories. (ND DOT at 1; GHSA at 2.) The commenters asked whether the NHTSA-provided database would be a GIS population of roads, what variables would be included in the database, and whether roads on tribal lands and national parks would be included. The road database that NHTSA intends to provide will include road type and location, but is unlikely to include vehicle miles traveled. Roads on tribal lands and national parks are included in the database. As discussed in more detail below, NHTSA has amended the rule to allow the exclusion of rural local roads in counties that are not included in a Metropolitan Statistical Area (MSA) and, as a result, many roads in tribal lands and national parks may be excluded. No change to the rule is made in response to these comments.

One commenter requested clarification on whether the State could use its own map, aerial photos or satellite images in site selection. (WI State Patrol at 2.) As stated in the rule, a State may use its own map, aerial photos or satellite images if it is approved by NHTSA, as provided in § 1340.5(a)(2).

One commenter asked whether the State must abandon the practice of making seat belt use observations only at stop lights or stop signs. (WI State Patrol at 2.) As specified in the proposal, the sampling frame may not be limited only to roads having a stop sign or stop light. Accordingly, States may not confine the data collection to stop lights and stop signs. Such a practice would exclude observation of a large universe of road segments, and would produce a biased seat belt use estimate. Consequently, the agency declines to adopt the suggestion in response to this comment.

Another commenter agreed with the proposed exclusions except for the exclusion of access ramps to interstate roadways. (Peters & Assoc. at 2.) GHSA requested an explanation of the road exclusions. (GHSA at 2.) As stated in the NPRM, the agency excluded these categories of roads for reasons of safety and practicality. In addition, some of these road categories are not likely to be in the database of road inventories, and they are low traffic volume roads that will not affect the overall estimate of the seat belt use rate. We note that a State may choose to exclude the roads identified in § 1340.5(a)(2)(iii), but is not required to do so. Therefore, a State may include access ramps in its database of road inventories. With this clarification, no change to the rule is made.

Several commenters expressed concern that the proposed road coverage requirement would require States, especially those with more rural areas, to sample on road segments with very little traffic volume. (ID DOT at 1; IL DOT at 1; NH HSA at 1; IACP at 1; ME DPSC at 1; GHSA at 1–2.) NHTSA researched this issue and found that while local roads (as defined by the Federal Highway Administration) have

more than two-thirds of road miles in rural areas, these roads experience only 13 percent of the VMT in rural areas. Sending data collectors to observation sites on some of these local roads might result in few, or even no, observations and would increase costs to the State. However, NHTSA determined that excluding all local roads in rural areas would have a measurable impact on the accuracy of the seat belt use rate estimate.

FHWA has classification standards for roads ("Functional Classification Guidelines") that all States use. In FHWA's Functional Classification Guidelines, "local roads" are a category of roads which are not collectors or arterials, but permit travel between end points of a trip. FHWA further classifies local, collector and arterial roads as being in an urban or rural area. Based on our review of available data, allowing States to exclude all "rural local roads" from the sampling frame would significantly impact the seat belt use rate estimate because a substantial number of rural local roads are in areas that have high traffic volumes and potentially high fatality rates. For this reason, NHTSA determined that allowing a more limited exclusion of rural local roads would be more appropriate.

Pursuant to 44 U.S.C. 3504(e)(3), 31 U.S.C. 1104(d), and Executive Order No. 10253, the Office of Management and Budget (OMB) defines Metropolitan Statistical Areas (MSAs) and other statistical areas. (*E.g.,* OMB Bulletin No. 10–02.) MSAs are statistical areas that include multiple counties and county-equivalents with at least one urbanized area that has a population of at least 50,000. *See* 75 FR 37246, 37252 (June 28, 2010). Rural local roads in counties or county-equivalents that are not part of an MSA are those roads that are likely to have very low traffic volume. Consequently, excluding rural local roads in non-MSA areas from the sampling frame would have a limited impact on the seat belt use rate estimate, but would significantly reduce data collection costs. Therefore, NHTSA has amended the Final Rule to allow an additional exclusion of rural local roads that are not included in an MSA.

3. Sampling Selection Requirements

A number of commenters requested clarification on the selection of observation sites, as provided in § 1340.5(b). (*E.g.*, TX at 2; Peters & Assoc. at 2; ND DOT at 1.) One commenter asked about the selection of roads and assignment of weights in order to avoid oversampling one road type. (GHSA at 2. *See also* NV DPS at 6.) We believe that this commenter is seeking clarification of two issues—(1) how should the road inventory be stratified by functional classifications for purposes of this selection; and (2) how should the observations at each observation site be weighted to ensure an accurate estimation of seat belt use rate. (*See also* WY HSP at 3, 11; MO DOT at 2; NY TSC at 2.) One commenter stated that if all roads in the State have an equal probability of being selected, streets and other roads with relatively low traffic volumes are likely to be overrepresented in the sample. (NY TSC at 2. *See also* NJIT at 1–2.)

States are not required to stratify their sampling frame, whether by road type or by another variable. The only requirement is that the selection of observation sites be probability-based, i.e., each observation site should have a known probability of selection. A State may draw a simple random sample without stratification from the entire road sampling frame, i.e., from the listing of all road segments within a county selected in the first stage of sampling. A State also may stratify the sampling frame in a variety of ways, using such variables as road classification or VMT, and then draw a probability based sample of observation sites from each stratum. Although NHTSA believes that stratifying road inventories by functional classification and selecting road segments with probability proportional to VMT within these strata is good practice, there are other valid approaches to forming a probability sample of observation sites.

Regardless of the method used for selecting observation sites, once observations are made, the data must be weighted in a manner consistent with the survey design. One commenter stated that because the State does not have VMT for all local roads, it would be forced to exclude these roads from the sampling frame. (LA HSC at 1.) States are not permitted to exclude systematically all local roads from the sampling frame. If the State does not have VMT for some or all eligible road segments in the selected counties, the State must use some other method for designing and selecting its sample. The survey statistician should be able to help States select an appropriate method for weighting observation sites. With this clarification, no change to the rule is made.

Several commenters requested additional information on the number of observation sites States need to include in their survey. The WY HSP asked whether States will be given any guidelines as to the recommended number of observation sites to be selected based on the number of counties. (WY HSP at 3.) The MO DOT requested that provisions be added for States to randomly select a representative group of counties from those representing 85 percent of the State's fatalities, similar to the table provided in the appendix to the current criteria. (MO DOT at 1.) The commenter further requested that the rule specify the required number of road segments to be sampled in each county. (MO DOT at 2.) The OR DOT requested a formula for determining the total number of sampling sites that would be needed. (OR DOT at 1.)

NHTSA does not intend to provide a table or formula specifying the number of observation sites per county based on the number of road segments available within that county. One table or formula will not optimally serve to determine the number of observation sites for all survey designs. We revised the Uniform Criteria to give States the flexibility to design a survey in a manner that best meets the specific environment in each State. States should rely on their survey statistician to develop a survey design that will meet the Uniform Criteria and meet the State's needs. The survey statistician can help the State determine the necessary sample sizes for selection of counties at the first stage and selection of observation sites (road segments) within the selected counties. NHTSA is developing a sample of an acceptable survey design to assist the States' redesign efforts, and will post the sample survey design on NHTSA's Web site. Accordingly, we decline to adopt these commenters' suggestion.

4. Substitution and Resecheduling of Observation Sites

Generally, commenters stated that the agency's proposal in § 1340.5(c) regarding protocols when observation sites are not available was reasonable. (WA TSC at 3; Peters & Assoc. at 3.) One commenter suggested that pre-selecting alternate observation sites before the start of data collection would be more practical. (Peters & Assoc. at 3.) The pre-selection of alternate observation sites is not precluded under the Uniform Criteria. The alternate observation sites must be in the same county and the same road classification as the observation site the State is replacing. Another commenter asked if it would be acceptable to combine both options—returning to the observation site on the same day of the week and at the same time of the day and selecting an alternate observation site—as part of the State's protocol when an observation site is temporarily unavailable. (TX DOT at 2.) States may include one or both

options as part of their protocol in their survey design. With this clarification, no change to the rule is made.

The commenter stated that requiring the State to return to an observation site at the same time and day of the week if an observation site is missed, especially if the observation site is hundreds of miles away, would increase commuting time and other costs. (IACP at 2. *See also* ODU at 3.) As stated in the NPRM, if conditions preclude data collection at an observation site at the scheduled time and day, States may elect to return to the observation site at the same time and day or collect data from preselected alternate observation sites to replace the observation site that is unavailable. *See* § 1340.5(c). If adverse weather precludes data collection, it is likely to affect data collection at multiple observation sites, especially if observation sites are cluster sampled. With adverse weather conditions, States generally should be able to anticipate whether the conditions would affect data collection before data collectors travel to the observation sites, and therefore, should be able to plan accordingly to mitigate commuting time and costs. States are encouraged to consider these issues and develop a protocol that best fits the conditions in its State. The agency makes no change to the rule in response to this comment.

5. Precision

The agency received a number of comments regarding the standard error in §§ 1340.5(d) and 1340.9(g). Some commenters agreed with the change. (WY HSP at 2–3; WA TSC at 3; IL DOT at 1.) Others stated that the change in the precision requirement would require a larger sample size or longer observation times, and this would result in higher survey costs. (Peters & Assoc. at 1, 3, 5; TX DOT at 2; GHSA at 2; NV DPS at 7; WV HSP at 2; ND DOT at 1; NH HSA at 1.) One of these commenters further stated that reducing the standard error by half would require a four-fold increase in sampling size, and asked whether it would be possible to get four times the current sample size with the same observation time. (NV DPS at 7.) This commenter may have misunderstood the change in the precision requirement—the 1998 Uniform Criteria specify that the relative error not exceed 5 percent while the proposed rule specifies that the standard error not exceed 2.5 percentage points. The standard error is an absolute measurement whereas the relative error measures the standard error as a fraction of the actual seat belt use estimate. Unlike the relative error, the standard error will not change regardless of a State's seat belt use rate estimate. A standard error holds all States to the same standard.

Our review of States' current surveys indicates that most States will be able to meet the required standard error of 2.5 percentage points with sample sizes comparable to their current surveys. Therefore, we believe that most States will not have to add a significant number of observation sites, and costs will not be significant. We also believe that any additional costs are outweighed by the improved quality and reliability of the survey data.

One commenter also stated that the precision calculation is made after the data are collected, and that an inadequate precision would require returning to some number or all of the observation sites to collect additional data, which could significantly increase the costs. (Peters & Assoc. at 3.) The commenter is correct that the final precision estimate cannot be made until after the data are collected. While a State would have to collect additional data if the precision is above 2.5 percentage points, the State would not have to return to all the observation sites to collect additional data. We note that at the survey design stage, the State may use information from its current survey or a similar survey from another State to estimate the number of observation sites that may be needed to provide a reasonable assurance that the precision requirement will be met. Consistent with standard practice in survey collection, States should select a sufficient number of observation sites to account for issues that may affect the standard error. We believe that a survey statistician should be able to help the State determine the proper sample size for the required precision. The agency declines to change the rule in response to these comments.

A commenter stated that the change in precision requirement will be difficult and expensive to achieve on rural roads. (NJIT at 2.) According to this commenter, fewer interstate and freeway roadways will be selected for performing data collection, which will lead to more roads of lower classifications and lower volumes being selected for observation. *Id.* The commenter further stated that this will result in longer time periods for data collection and in some cases require more than one visit to a location for data collection. *Id.* The precision requirement applies to the entire survey—not to individual observation sites. As stated above, for most States, we do not believe that the change will substantially affect the number of observation sites that will be required. Consequently, the periods of data collection should not substantially change for most States. We note that NHTSA is revising the proposal to allow States to exclude rural local roads in counties that are not included in an MSA from the sampling frame, which will help mitigate the concerns of this commenter. Accordingly, no further change to the rule is made in response to this comment.

One commenter stated that consistency in training and observation would be a much better place to invest resources than in reducing sampling error. (NH HSA at 1.) NHTSA assumes the commenter is asserting that improved training would reduce survey sampling error. There are two kinds of errors—measurement errors and sampling errors. Consistency in training to improve observation skills can reduce measurement errors, i.e., the accuracy of the observations. However, it will not reduce sampling error, which is a result of a subset of the target population is being observed. Consequently, the agency declines to adopt this commenter's suggestion.

E. Assignment of Observation Times (§ 1340.6)

Two commenters expressed support for the proposed observation times. (WA TSC at 3; Peters & Assoc. at 3.) One commenter stated that requiring data collection until 6 p.m. could pose difficulties during late fall and winter, when it gets dark by 5 p.m. (IACP at 1.) In the NPRM, the agency proposed that data collection must take place during daylight hours, not all hours, between 7 a.m. and 6 p.m. Accordingly, States would not be required to collect data at an observation site during non-daylight hours even if they fall between the hours 7 a.m. and 6 p.m. No change to the rule is made in response to these comments.

Two commenters stated that requiring random assignment of the day of the week for observations would increase costs, especially if data collectors were sent to opposite corners of the State in a 24-hour period. (IACP at 2; ODU at 3.) While the NPRM proposed random assignment of the day of the week for observations, it also proposed allowing States to cluster sample or group observation sites in close geographic proximity in order to reduce the costs of random assignment of observation sites. (*See also* OR DOT at 1.) This would reduce the need for data collectors to be sent to opposite corners of the State in a 24-hour period.

These commenters also suggested treating weekdays as equal and

weekends as equal. (IACP at 2; ODU at 3.) NHTSA does not have data to support the assumption that there is no seat belt use rate difference between the days of the week and between Saturday and Sunday. We believe that allowing States to cluster sample observation sites in close proximity should sufficiently reduce the operational costs of random assignment of the day of the week. Therefore, NHTSA declines to adopt this recommendation.

The NV DPS asked how many observation sites can be grouped together into geographical clusters. (NV DPS at 7.) NHTSA did not propose to limit the number of observation sites that can form a cluster. As long as the State can allocate an appropriate time period for data collection at each observation site, those observation sites may be cluster sampled. No change to the rule is made in response to this comment.

F. Observation Procedures (§ 1340.7)

1. *Data collection dates.* The TX DOT commented that the proposal did not specify that the surveys should be conducted uniformly after Click It or Ticket or Memorial Day Monday. (TX DOT at 2.) This commenter recommended a wider window of survey time, such as May 1 through June 30. *Id.* In the NPRM, the agency did not propose a change from the requirement in 1998 Uniform Criteria that all observations take place during the calendar year, i.e., January 1 to December 31. Although most States choose to conduct seat belt use surveys after Click It or Ticket or Memorial Day Monday, States may conduct surveys anytime during the calendar year. No change to the rule is made in response to this comment.

2. *Roads with two-way traffic.* Peters & Assoc. commented that on low volume two-way streets, limiting an observer to observing one direction of traffic flow would result in unnecessary additional survey cost. (Peters & Assoc. at 4.) NHTSA believes that consistent methods for data collection should be applied at all observation sites, regardless of the volume of traffic. Moreover, requiring the data collector to observe traffic in one direction will help reduce measurement error. Accordingly, the agency declines to change the rule in response to this comment.

3. *Vehicle coverage.* The agency received a number of comments regarding the proposal's vehicle coverage requirements. The commenters were generally supportive of the proposal, but a few questioned the inclusion of certain vehicles. Several commenters appeared to misunderstand the requirements, and some commenters requested clarification.

One commenter stated that the proposal did not address State seat belt law exemptions for certain vehicles and recommended that all vehicles operated on a public roadway should be included in the survey regardless of a State's exemptions. (LA HSC at 2.) In contrast, two commenters questioned the inclusion of vehicles that are exempt under the State's seat belt law because it would not provide an accurate measure of compliance. (NY TSC at 2; GHSA at 2.) In the NPRM, the agency stated that all passenger motor vehicles must be included in the survey, including vehicles that are exempt by the State's seat belt law. The purpose of the seat belt use rate survey is not to determine compliance with the State's seat belt law, but rather to estimate the actual seat belt use of drivers and right front passengers. Consequently, the agency makes no change to the rule in response to these comments.

One commenter supported the inclusion of "passenger vehicles for commercial use" in the seat belt use survey. (WY HSP at 2.) Three commenters requested clarification of the term "commercial passenger motor vehicle." (OR DOT at 1; TX DOT at 3; GHSA at 2.) Earlier in this notice, we clarified that passenger motor vehicles include a passenger car, pickup truck, van, minivan or sports utility vehicle with a GWVR of less than 10,000 lbs. Data from motor vehicles over 10,000 lbs GWVR need not be included in this survey. As stated in the preamble of the NPRM, data must be collected for passenger motor vehicles being used for commercial purposes. In other words, data from such passenger motor vehicles as taxis, flower delivery vans, and pizza delivery cars that are under 10,000 lbs GVWR must be included in the seat belt use survey. To clarify this point, in § 1340.7(c), the agency has amended the phrase "commercial passenger motor vehicles" to read "passenger motor vehicles used for commercial purposes."

Three commenters stated that it would be difficult to collect or report data separately for various types of vehicles, such as passenger vehicles, commercial vehicles and out-of-state vehicles. (OR DOT at 1; WA TSC at 2; NV DPS at 8.) Although some States may want to collect such data separately in order to better serve their problem identification and program evaluation needs, the NPRM did not propose, and the Final Rule does not require, States to collect or report the data separately for these various vehicles.

4. *Occupant coverage.* Two commenters supported the agency's proposal to include right front passengers in booster seats in the seat belt use survey and exclude right front passengers in child safety seats. (Peters & Assoc. at 4; WY HSP at 2.) Three commenters disagreed with the proposal, with one recommending that children in child safety seats and booster seats be included in the seat belt use survey, another recommending that children in child safety seats and booster seats be excluded from the seat belt use survey, and a third recommending that both be excluded or both be included. (NY TSC at 2–3; WA TSC at 3; GHSA at 2–3.) As stated in the NPRM, we believe that data on passengers in child safety seats should be excluded because it is not possible to observe whether a child safety seat is properly installed or the child is properly restrained in the child safety seat. Unlike child safety seats, however, booster seats require the use of the readily-observable shoulder belt to secure the passenger. To clarify any misunderstanding, data on children in child safety seats should not be collected and reported in the seat belt survey conducted. (*See* GHSA at 3.) We do not believe that this will have much impact on the seat belt rate estimate since we expect the number of children in child safety seats in the front right passenger side of passenger motor vehicles to be limited. With this clarification, the agency makes no change to the rule.

Two commenters supported the proposal's requirement to record belted and unbelted occupants. (GHSA at 3; WY HSP at 2.) Two commenters disagreed with recording the belt status as unknown if it could not reasonably be determined whether the driver or the right front passenger is belted. (WI State Patrol at 2; Peters & Assoc. at 4.) These commenters suggested recording unknowns as unbelted. *Id.* We believe that the practice of recording unknown belt use as unbelted would underestimate the actual seat belt use rate estimate. For this reason, the agency declines to change the rule in response to these comments.

NJIT stated that there are many cases when shoulder belt use is "unknown," and that recording unknowns will gather unusable data, making it difficult for data collectors to know when they have collected enough observations. (NJIT at 3.) We believe that the commenter is concerned that observations must continue at all observation sites until the percent of unknown seat belt use observations is below 10 percent. To clarify, the nonresponse rate is determined based on the entire survey sample, not

individual observation sites. In addition, we do not agree that recording unknowns results in collecting unusable data. For quality control purposes, it is good practice to count and report the number of unknown belt use observations that occur. If the percent of unknown observations is high, this may indicate a need to improve observer training. The agency makes no change to the rule in response to this comment.

The agency did not receive specific comments regarding survey variables in § 1340.7(e). However, the agency has decided to change the term "survey variable" to "survey data" because this term describes the information more accurately.

The agency received only supportive comments regarding the data collection environment in § 1340.7(f). Accordingly, the agency made no changes to this provision.

G. Quality Control (§ 1340.8)

Although some commenters agreed that random unannounced visits would ensure more accurate data, several commenters stated that requiring quality control monitors at five percent of the observation sites would increase the survey costs. (WA TSC 3; Peters & Assoc. at 4; NV DPS at 8; GHSA at 3.) The LA HSC stated that unannounced visits by quality control monitors would require increased supervision of personnel. (LA HSC at 1.) Requiring quality control monitors to conduct random unannounced visits will increase survey costs to some States, especially to those States that do not currently conduct such visits. However, some level of supervision of data collectors is necessary for quality control. We believe that quality control monitors at five percent of the observation sites strikes the proper balance to minimize the costs while still ensuring that good data are being collected. The agency makes no change to the rule in response to these comments.

One commenter stated that sending quality control monitors would be difficult, especially in States with limited resources, and suggested that standards for inter-accuracy ratio testing be required for all States instead of quality control monitors. (WY HSP at 2.) We assume that the commenter is referring to "inter-rater reliability." Inter-rater reliability is a measure of rating or coding consistency among different raters or coders, i.e., data collectors. While inter-rater reliability would be helpful for training observers, independent quality control monitors provide reasonable assurance that observation protocols are being properly implemented. As stated above, while this may increase some survey costs, we believe that this requirement would help ensure that good data are being collected. Consequently, the agency declines to adopt this recommendation.

The WY HSP asked whether "random unannounced visits" means randomly selected sites within each county or throughout the State, whether quality control monitors must visit each observer, and whether there are any criteria for these quality control monitors. (WY HSP at 5.) In the NPRM, the agency did not specify how to conduct random unannounced visits. Instead of requiring States to conduct these visits in a specific manner, the only requirements are that States conduct these visits to five percent of the observation sites and that the same individual cannot both collect data and monitor the collection of data at the same time. We believe that States should have flexibility in how to conduct these visits, taking into account each State's survey design and specific conditions. For example, a State may elect to conduct an unannounced visit in each county, for each survey crew or using some other factor. We note that random unannounced visits serve not only to check if data are being collected in accordance with the survey protocol, but also as a deterrent to bad data collection. The ME DPSC requested clarification regarding whether the quality control must be conducted by a vendor and not by the observer. (ME DPSC at 1.) As noted above, the same individual cannot both collect data and monitor data collection at the same time. Other than that restriction, the only requirements for a quality control monitor are that the individual be trained in the observation protocols and the substitution and rescheduling of observation sites. No change to the rule is made in response to these comments.

One commenter supported the training requirements for survey observers. (GHSA at 3.) Another commenter suggested that once observers have extensive training, the trained observers should be allowed to have refresher training via telephone conference call, Webinar, etc. every alternate year in order to keep the costs down. (WY HSP at 2.) We agree with the commenter that, once trained, observers may have refresher training via telephone conference calls, Webinars, or other methods that minimize costs. However, we believe that annual training is important to ensure accurate data collection, especially since data collectors are often not regularly engaged in data collection throughout the year. Accordingly, we decline to adopt the commenter's suggestion.

Three commenters questioned the requirement for a survey statistician and sought clarification of the statistician's qualifications. (ODU at 3; WY HSP at 3; IACP at 2–3.) The proposed requirement for a statistician is not to provide an additional level of checks and balances, as one commenter suggested, but to ensure that both the survey design and the annual reporting of seat belt use rates are carried out in a methodologically-sound manner. (*See* WY HSP at 6.) Over the years, we have encountered numerous instances where data were analyzed incorrectly, resulting in inaccurate seat belt use rate estimates. We believe that part of the reason for these errors was the lack of statistician involvement in the data analysis. For this reason, the rule requires that adequate statistical expertise be applied to the analysis of the survey data. As stated in the NPRM, the survey statistician should have knowledge of designing probability-based multi-stage samples, statistical estimators from such designs, and variance estimation of such estimators. To clarify, the statistician does not have to have a specific degree in statistics, but rather have sufficient training and experience in designing research surveys and analyzing the data, as described in the Uniform Criteria. However, the agency is removing "seat belt" from the term "seat belt survey statistician" in this section and throughout the rule to clarify that the statistician must be a person trained in statistical methodology.

Several commenters stated that requiring a statistician would add significant costs. (ODU at 3; IACP at 2–3; WA TSC at 3; Peters & Assoc. at 6; GHSA at 3.) As noted above, we have found errors in some State seat belt use rate estimates, and we believe that requiring a statistician to review and confirm the estimate annually will help reduce the errors we have seen. Although some States may incur additional costs, especially those that currently do not employ a statistician, the requirement is necessary in light of the errors noted above. States may use Federal grant funds, such as Section 402 and Section 406, to defray the costs of designing and conducting seat belt use surveys. Conducting an annual Statewide seat belt use survey in accordance with the uniform criteria "to ensure that measurements are accurate and representative" is an administrative requirement under Section 402. While NHTSA is ready to provide technical assistance, we believe that States should rely on their own statistician to ensure

that the State seat belt use rate estimate is overseen and properly implemented in accordance with the approved survey design. Consequently, the rule remains unchanged with regard to this requirement.

H. Computation of Estimates (§ 1340.9)

One commenter generally supported all of the requirements in the proposal regarding computation of estimates. (WA TSC at 3.)

The agency received no comment regarding § 1340.9(b) (data editing). Therefore, NHTSA is making no substantive change to the requirement in this provision. (The agency is making a minor amendment to remove the phrase "or statistically edited," because it is redundant.)

NHTSA received three comments regarding the imputation of unknown values of variables. Peters & Assoc. questioned the need for data imputation and GHSA stated that no imputation should be allowed. (Peters & Assoc. at 4; GHSA at 3.) The proposal does not require imputation, but rather allows States to use imputation if it is pre-approved by NHTSA. In general, NHTSA does not believe that imputation of unknown values will be necessary. However, in order to provide flexibility to States, NHTSA is allowing imputation if it is necessary to improve the estimates and the methodology is approved by NHTSA prior to data analysis. As noted by the IACP, there are a number of imputation methods. (IACP at 1.) NHTSA is not specifying which methods are acceptable because the acceptability of an imputation method depends on the survey design. NHTSA will ensure the proper use of imputation in surveys by requiring approval before imputation methods are used. No change to the rule is made in response to these comments.

One commenter asked for clarification of data-weighting if the survey is fatality-based as proposed in the NPRM. (Peters & Assoc. at 4.) As discussed in detail in Section III.D.1 above, we believe this type of concern arises from a misunderstanding regarding the fatality-based exclusion from the sampling frame. Fatality counts will be used to determine which counties may be excluded from the sampling frame. States will weight the data based on the selection probability of the sample observation site, which is determined by the way that the samples are selected. For example, observation sites may be selected by a simple random sample or by a probability proportional to sample size. Various measures such as VMT or traffic flow counts could be used for the measurement of size.

However, to clarify the sampling weight requirements, the agency is changing the reference to "inverse of the selection probability of the observation site at which the data were obtained" to "sampling weights as required by the sample design and any subsequent adjustments." This change is necessary to clarify that the weights used in the estimation process reflect both the original sampling process and any subsequent weighting necessary, e.g., selection of direction of travel or of travel lanes for observation, non-response adjustments, among others. The Final Rule now reads as follows: "The estimation shall weight observed data by the sampling weights as required by the sample design and any subsequent adjustments."

NHTSA received two comments regarding the requirement to include a procedure to adjust the sampling weights for observation sites with no usable data. One commenter stated that using an alternate observation site would be the most practical method. (Peters & Assoc. at 5.) In the proposal, the agency identified several methods to adjust for observation sites with no usable data, including using alternate observation sites. However, as stated in the preamble to the NPRM, allowing the States flexibility for selecting the method based on their survey design will enable them to determine which method or combination of methods best meets their needs.

Another commenter stated that States will incur additional costs for the suggested protocols for handling observation sites where data are not collected. (WY HSP at 3.) Although States have flexibility to select among several methods to adjust for observation sites with no usable data, some States may need to return to observation sites at a later time or visit an alternate observation site for data collection. Generally, observation sites at which no data are collected are very low traffic volume observation sites. As noted in Section III.D.2 above, rural local roads in counties that are not included in an MSA are roads with very low traffic volume. Because the agency is allowing States to exclude these roads, we believe that the incidence of returning to observations sites will be limited. For this reason, the agency is making no change in response to this comment.

The agency received numerous comments regarding the nonresponse rates. To summarize, the NPRM proposed that the nonresponse rates for the entire survey must not exceed 10 percent (for the total number of recorded unknown values of passenger presence to the number of passenger motor vehicles observed and for the ratio of the total number of recorded unknown values of belt use to the drivers and right front passengers observed). The NPRM further proposed that the State must include a procedure to collect additional observations if the nonresponse rates exceed 10 percent.

One commenter thought that a 10 percent nonresponse rate was too high, especially if imputation methods are used. (ME DPSC at 1.) States should strive to hold their unknown values well below 10 percent, and we believe that most States would be able to meet that requirement. As discussed above, we do not require imputation, and NHTSA will review any imputation proposals to ensure that imputation methods do not impair the accuracy of the data. We believe that allowing States a certain percentage of unknowns is necessary to ensure that any increased costs are not substantial. The agency declines to change to rule in response to this comment.

NHTSA received numerous comments expressing concern about increased survey costs related to the need to oversample observation sites or collect additional observations when the nonresponse rate exceeds 10 percent. (*E.g.,* ND DOT at 1; GHSA at 3; ODU at 2.) Two commenters stated that this requirement would result in a longer overall survey timeline or slow the survey results. (Peters & Assoc. at 5; WY HSP at 3.) Although some States may incur increased survey costs and additional data collection time, with a properly designed survey and observation protocols, NHTSA does not anticipate that many States will need to return to observation sites to conduct additional observations. As a general principle, a properly designed survey should include a sufficient number of observation sites, anticipating that a few or some observation sites may produce no usable data. We believe that the increased costs that some States may incur are necessary to ensure a more accurate, representative seat belt use rate estimate. However, to reduce the reporting burden on States, NHTSA is deleting the proposed requirement that the nonresponse rate of passenger presence must not exceed 10 percent. While States must still collect data on passenger presence to help monitor quality control of data collection, States would not be required to report the nonresponse rates for passenger presence to NHTSA. In the Final Rule, the agency makes amendments in § 1340.9 and the Appendix to reflect this change.

Two commenters had concerns about nonresponse rates exceeding 10 percent in free-flowing traffic or on interstates with high speed travel. (IACP at 2; IL DOT at 1.) There are several methods to reduce the nonresponse rates in high speed travel or in high traffic areas. For example, observations may follow a protocol that does not attempt to observe all vehicles passing by, such as observing only a single lane, observing and recording every other vehicle or every third vehicle, among others. Vehicles that are not attempted to be observed would not be counted in the survey, i.e., they would not be counted as unknown. Only vehicles that are attempted to be observed must be recorded for the seat belt use status of the driver and right front seat passenger, if present.

Currently, most States use one of two methods for observations on interstate highways or other high speed roadways. One method is to conduct the observations at the base of the first exit ramp within or beyond the selected road segment. Another method, which may be less cost effective, is to collect observations while travelling in a vehicle at such locations—one member of the observation team would drive along the road segment at a speed below the posted limit while another member of the observation team would collect the data by observing the belt use of drivers and passengers in overtaking vehicles. Either of these methods or a combination of methods should help to reduce the incidence of unknown belt use observations, and therefore, help keep the nonresponse rate below 10 percent. With this explanation, the agency has made no change to the rule in response to these comments.

One commenter suggested that requiring States to record unknown variables may require in-field calculations. (Peters & Assocs. at 5. *See also* ODU at 2.) The requirement that unknown values must not exceed 10 percent applies to the entire survey, not to data collected at individual observation sites. There is no need to conduct in-field calculations to verify that the observations at a given site are below 10 percent. Specifically, the nonresponse rate is computed by dividing the total number of drivers and right front seat passengers with unknown belt use status by the total number of drivers and right front seat passengers observed. At the end of the survey, if the State still exceeds the nonresponse rate requirement, the State must collect additional data. No change to the rule is made in response to this comment.

NHTSA received a number of comments regarding the variance estimation. For purposes of discussion, these comments are addressed under the precision requirement of the selection of observation sites in Section III.D.5 above.

I. Submission and Approval of Seat Belt Survey Design and Post-Approval Alterations to Survey Design (§§ 1340.10 and 1340.11)

One commenter supported the requirements for submission and approval of seat belt survey designs. (GHSA at 3.) Another commenter stated that the new survey design requirements will require input from a survey statistician. (Peters & Assoc. at 5.) The agency anticipated that States would need a survey statistician to help design and conduct surveys and analyze the collected data. As discussed in detail in Section III.G. above, we have encountered instances of problematic survey results over the years, and we believe that these instances were the result of insufficient statistical expertise in the design and/or analysis phase of reporting the seat belt use rate estimate. For this reason, the agency proposed that survey results be reviewed and approved by a survey statistician. We believe that this will result in improved and more accurate survey results. The Final Rule retains the requirement for a survey statistician.

In § 1340.10(a), NHTSA has corrected cross references, and in § 1340.10(a)(1)(v), NHTSA changed the language "Define an observation site" to "Specify the method used to select the road segments for observation sites as provided by § 1340.5(b)". This change clarifies what was being requested of the State and reflects the sequence generally followed in designing and selecting samples.

Several commenters stated that States needed more time to develop a new survey design and recommended delaying the implementation of the revised criteria. (*See* IACP at 1, WV HSP at 2, ND DOT at 1, GHSA at 4, and WY DOT at 3.) NHTSA agrees and has decided that the revised criteria will apply to seat belt use surveys conducted during calendar year 2012 and thereafter, not during calendar year 2011. In response to these comments, the agency has made changes to § 1340.2 (Applicability) and has revised the deadline for submission of proposed survey designs in § 1340.10(b) to January 3, 2012.

One commenter asked whether a State must submit its survey design every year, even if there are no substantive changes from the previous survey design approved by NHTSA. (WI DOT at 2.) The commenter agreed that States should resubmit the survey design when they propose to re-select observation sites or make other substantive changes to the survey design or data capture/processing protocol. *Id.* The agency did not intend States to submit survey designs every year. For calendar 2012 seat belt use surveys, the first year under the new requirements, States are required to submit proposed survey designs by January 3, 2012 so that NHTSA will have sufficient time to review the survey design before the surveys are conducted. Once a State's survey design has been approved by NHTSA, the State is not required to resubmit the survey design unless the State proposes alterations to a NHTSA-approved survey design. (*See* § 1340.11.) This is consistent with the annual reporting requirements, under which States certify that the survey was conducted using a survey design that was approved by NHTSA and that the survey design has not changed since NHTSA approval. (*See* § 1340.13(b); Appendix.) If a State chooses to redesign its seat belt survey, it should follow the procedures identified in § 1340.11. To clarify this point, the agency has added language in § 1340.10(b).

J. Re-Selection of Observation Sites (§ 1340.12)

One commenter disagreed with the requirement to update the survey design every five years, and two commenters stated that requiring States to re-select observation sites from updated sampling frame data would cause States to incur additional costs. (WY HSP at 1; Peters & Assoc. at 6; WA TSC at 3.) States are not required to redesign their surveys every five years. Rather, in the NPRM, the agency proposed requiring States to re-select observation sites every five years. Under the current seat belt use surveys, many States may be using an inventory of road segments that is years out-of-date. The inventory of road segments changes over time as new roads are constructed and existing roads are closed or changed. An up-to-date inventory of road segments is necessary to ensure that the seat belt use estimate is accurate and representative of Statewide seat belt use. We believe that the additional costs for re-selecting observation sites every five years will not be significant because States are required only to re-select observation sites from updated sampling frame data, not to redesign their surveys. In order to minimize the costs, NHTSA intends to provide States with the updated three, four or five year fatality distribution and

inventory of road segments. The agency makes no change to the rule in response to these comments.

One of the commenters also expressed concerns that the re-selection of observation sites would require a new survey design, sampling of sites, pilot testing and travel to new sites to assess visibility and safety. (WA TSC 3–4.) The agency does not believe that the re-selection of observation sites requires a new survey design. While we believe that it is good practice to travel to new observation sites to assess visibility and safety, NHTSA is not specifying how States should determine where observations should be conducted and what other implementation measures should be adopted. These are decisions that the State is best positioned to make. We do not believe that these costs would be significant. The reasonable additional costs associated with re-selecting observation sites are necessary to ensure that the survey continues to be representative of the current inventory of road segments. No change to the rule is made in response to this comment.

One of the commenters stated that the requirement to reexamine geographic distribution of fatalities from the most recent three years could result in an inclusion or exclusion of different counties every five years, causing site selection changes and efficiencies associated with sample clustering to change every five years. (Peters & Assoc. at 2.) Although the sampling frame of counties could change every five years, we do not expect significant changes based on our review of historical FARS data. As discussed in Section III.D.1 above, NHTSA is amending the Final Rule to allow States the option of using a fatality distribution of three, four or five years instead of three years, which will help further reduce changes in the sampling frame. We note that the actual observation sites would change, because of re-selection requirements, regardless of whether the sampling frame of counties changes. States will still be able to cluster sample with the new observation sites. The agency makes no change to the rule in response to this comment.

A commenter questioned whether NHTSA would have the capacity to review all State and territorial seat belt survey designs every five years. (GHSA at 4.) The commenter suggested that after the initial review, NHTSA should stagger subsequent State reviews so that one-fifth of all State and Territory survey protocols are reviewed every year. Id. NHTSA will review and approve survey designs from all States and Territories for surveys conducted beginning calendar year 2012. The NPRM did not propose and the Final Rule does not require States to redesign surveys for NHTSA approval every five years. Rather, States are required to re-select observation sites using updated sampling frame data. It is the updated sampling frame data that requires NHTSA approval. NHTSA will deploy the necessary resources to review updated sampling frame data from all States and Territories.

K. Annual Reporting Requirements

NHTSA received two positive comments in support of the annual reporting requirements.[4] (TX DOT at 1; GHSA at 3.) However, one commenter seemed to suggest that the current "research report" describing the survey methodology and results produced by States was sufficient. (WA TSC at 4.) Under the current reporting requirements, NHTSA does not have sufficient information to evaluate the computation of the seat belt use rate estimate. Based on our experience, some of the reported results were not consistent with the computation formula in the NHTSA-approved survey design. For this reason, NHTSA is requiring additional information in the annual reports submitted by States. NHTSA believes that the additional information is necessary in order to carry out the agency's responsibilities for grant management and oversight. No change to the rule is made in response to this comment.

One commenter suggested requiring a certification from the Governor's Representative for Highway Safety instead of the certification by the statistician. (GHSA at 3.) After careful consideration, the agency has decided to amend the rule to require only a certification from the Governor's Representative and to remove the requirement for certification by the statistician. However, a qualified survey statistician is still required to review and approve the survey results. *See* § 1340.8(c). Accordingly, NHTSA is amending the certification by the Governor's Representative to certify that a qualified statistician has reviewed the reported seat belt use rate estimate and information reported in Part B, and has determined that they meet the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340. The agency has made changes to § 1340.13 and corresponding changes to the certification in the Appendix in response to this comment.

[4] NV DPS stated that the raw data from all States should be available online to the public. (NV DPS at 1.) We believe that the idea of making raw data available online deserves further consideration, but that it is a policy decision that is ancillary to the rulemaking. Therefore, we do not make changes to the rule in response to this comment.

IV. Statutory Basis for This Action

The Final Rule amends the uniform criteria for the measurement of State seat belt use rates for surveys that States are required to conduct annually under a grant program in accordance with 23 U.S.C. 402(b)(1)(E)(iii).

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended by Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821, January 21, 2011), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This Final Rule was not reviewed by the Office of Management and Budget under Executive Order 12866. The Final Rule is not considered to be significant within the meaning of E.O. 12866 or the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034 (Feb. 26, 1979)).

This Final Rule does not affect amounts over the significance threshold of $100 million each year. This Final Rule sets forth the criteria for designing and conducting State seat belt use observational surveys, procedures for obtaining NHTSA approval of survey designs, and a new form for reporting seat belt use rates to NHTSA. The costs to design and conduct observation surveys under the criteria are well below the annual threshold of $100 million. This Final Rule does not adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This Final Rule does not create an inconsistency or interfere with any actions taken or planned by other agencies. This Final Rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Finally, this Final Rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Currently, States are required to provide satisfactory assurances that they will conduct an annual Statewide seat belt use survey in accordance with the uniform criteria as part of the administrative requirements for a highway safety grant under 23 U.S.C. 402(b)(1)(E)(iii). This Final Rule does not change the statutory requirement to provide assurances that the State will conduct an annual Statewide seat belt use survey, but does change the way States collect and report survey data and the allowable error rate. Specifically, this Final Rule requires States to draw observation sites from an updated sampling frame. This Final Rule also improves quality control of the data collected by requiring States to train observers before data collection, to have quality control monitors conduct unannounced visits, and to have a statistician review the data collected. Finally, this Final Rule requires States to submit additional information in their annual certifications.

The agency has determined that this Final Rule is not significant. If a State does not provide assurances that it will conduct an annual Statewide seat belt use survey in accordance with the uniform criteria in a given year, a percentage of Section 402 grant funds could be withheld. However, States rely on statistically valid observational surveys of seat belt use to plan and evaluate their highway safety programs and have committed, through their highway safety offices, to conduct annual Statewide seat belt use surveys as part of the core performance measurement process. The agency believes that no State will decline to provide the required assurances. Because the impacts of this Final Rule are minimal, the agency is not required to prepare a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to 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 publishes 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 governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rulemaking action would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this Final Rule under the Regulatory Flexibility Act. This Final Rule applies to States and they are not considered to be small businesses under the Regulatory Flexibility Act. States may employ contractors to collect survey data (which may be small businesses), but this Final Rule merely changes the procedures of collecting survey data and will not have a significant impact on the costs or profits of small businesses. Therefore, I certify that this Final Rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires NHTSA 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 or the agency consults with State and local governments in the process of developing the proposed regulation. The agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this Final Rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that this Final Rule does not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. This Final Rule does not impose substantial direct compliance costs. While the costs to the States may vary depending on such factors as the State's current survey design and the size of the State, the agency estimates that the average cost to a State would be at most in the tens of thousands of dollars. We note that Federal funds from a number of NHTSA grant programs may be used to defray these costs. This Final Rule also does not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

While the agency has determined that this Final Rule does not have sufficient Federalism implications to warrant formal consultation with State and local officials, the agency is aware that the revised criteria will impact States. For a number of years, the agency has had ongoing discussions with State officials about the seat belt use survey criteria. Several of these State officials expressed concerns about the accuracy and consistency of the survey results. Before the NPRM was published in January 2010, the agency discussed the possibility of revising the seat belt use survey criteria with officials from State Highway Safety Offices at Governors Highway Safety Association (GHSA) meetings. The agency sought their views on the need to change the criteria and potential areas of revision. Generally, these State officials were supportive of revising the seat belt use survey criteria to make the survey results more accurate and consistent.

In addition, when the NPRM was published, the agency reached out to the States and encouraged States to review the NPRM and provide comments. NHTSA received extensive comments from many States and interested parties, such as associations and universities and contractors, who assist States in conducting and analyzing the results of seat belt use surveys. As discussed in the preamble of the Final Rule, NHTSA revised the criteria to reduce further the

impact on States in response to the States' comments.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This rulemaking action would not have any retroactive effect. This action 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.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. There are reporting requirements contained in the Final Rule that are considered to be information collection requirements under the Paperwork Reduction Act, as that term is defined by OMB in 5 CFR Part 1320. The estimated total annual burden is 19,040 hours. The total estimated number of respondents is 56 (50 States, the District of Columbia, Puerto Rico and 4 territories).

Pursuant to the Act, the agency solicited public comments on the proposed collection of information, with a 60-day comment period, in the notice of proposed rulemaking published on January 28, 2010 (75 FR 4509). The agency will publish a separate **Federal Register** Notice when we submit the information collection request to OMB for approval.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or Final Rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with a base year of 1995 (about $118 million in 2004 dollars)). This Final Rule does not include a Federal mandate resulting in annual State expenditures that would exceed the $100 million threshold.

G. National Environmental Policy Act

NHTSA has reviewed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this Final Rule does not have a significant impact on the quality of the human environment.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agency has analyzed this Final Rule under Executive Order 13175, and has determined that the Final Rule does not have a substantial direct effect on one or more Indian tribes, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law. Therefore, a tribal summary impact statement is not required.

I. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

K. Congressional Review of Agency Rulemaking

The agency has not submitted the Final Rule to the Congress and the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* This Final Rule is not a "major rule" within the meaning of the Act.

List of Subjects in 23 CFR Part 1340

Grant programs—Transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the National Highway Traffic Safety Administration revises 23 CFR part 1340 to read as follows:

PART 1340—UNIFORM CRITERIA FOR STATE OBSERVATIONAL SURVEYS OF SEAT BELT USE

Subpart A—General

Sec.
1340.1 Purpose.
1340.2 Applicability.
1340.3 Definitions.

Subpart B—Survey Design Requirements

1340.4 In general.
1340.5 Selection of observation sites.
1340.6 Assignment of observation times.
1340.7 Observation procedures.
1340.8 Quality control.
1340.9 Computation of estimates.

Subpart C—Administrative Requirements

1340.10 Submission and approval of seat belt survey design.
1340.11 Post-approval alterations to survey design.
1340.12 Re-selection of observation sites.
1340.13 Annual reporting requirements.
Appendix A to Part 1340—State Seat Belt Use Survey Reporting Form

Authority: 23 U.S.C. 402; delegation of authority at 49 CFR 1.50.

Subpart A—General

§ 1340.1 Purpose.

This part establishes uniform criteria for State surveys of seat belt use conducted under 23 U.S.C. 402, procedures for NHTSA approval of survey designs, and administrative requirements relating to State seat belt surveys.

§ 1340.2 Applicability.

This part applies to State surveys of seat belt use, beginning in calendar year 2012 and continuing annually thereafter.

§ 1340.3 Definitions.

As used in this part—

Access ramp means the segment of a road that forms a cloverleaf or limited access interchange.

Cul-de-sac means the closed end of a road that forms a loop or turn-around.

Non-public road means a road on which members of the general public are not allowed to drive motor vehicles.

Nonresponse rate means, for any survey variable, the percentage of unknown values recorded for that variable.

Observation site means the physical location where survey data are collected.

Passenger motor vehicle means a motor vehicle with a gross vehicle weight rating of less than 10,000 pounds, including a passenger car, pickup truck, van, minivan or sport utility vehicle.

Service drive means the segment of a road that provides access to businesses and rest areas.

Traffic circle means the segment of a road or intersection of roads forming a roundabout.

Unnamed road means a road, public or private, that has no name or number designation and is often a farm or logging road.

Vehicular trail means a road designed or intended primarily for use by motor vehicles with four-wheel drive.

Subpart B—Survey Design Requirements

§ 1340.4 In general.

This subpart sets forth the minimum design requirements to be incorporated in surveys conducted under this part.

§ 1340.5 Selection of observation sites.

(a) *Sampling frame requirements*—

(1) *County coverage.* The sampling frame from which observation sites are selected shall include counties or county-equivalents (including tribal territories), as defined by the U.S. Census Bureau, that account for at least 85 percent of the State's passenger vehicle occupant fatalities, provided that the average of the last three, four or five years, at the State's option, of available Fatality Analysis Reporting System (FARS) data or State fatality data approved by NHTSA shall be used to determine the State's passenger vehicle occupant fatalities.

(2) *Road coverage.*

(i) States shall select observation sites from a database of road inventories approved by NHTSA or provided by NHTSA.

(ii) Except as provided in paragraph (a)(2)(iii) of this section, all roads in the State shall be eligible for sampling. The sampling frame may not be limited only to roads having a stop sign, stop light or State-maintained roads.

(iii) The sampling frame need not include: rural local roads, as classified by the Federal Highway Administration's Functional Classification Guidelines, in counties that are not within a Metropolitan Statistical Area (MSA), as published by the Office of Management and Budget; non-public roads; unnamed roads; unpaved roads; vehicular trails; access ramps; cul-de-sacs; traffic circles; or service drives.

(b) *Sampling selection requirements.* The set of road segments selected for observation sites shall be chosen based on probability sampling, except that—

(1) The specific observation site locations on the sampled road segments may be deterministically selected;

(2) An alternate observation site may be used to replace an observation site selected based on probability sampling if it is located in the same county or county-equivalent, and has the same roadway classification (e.g., local road segment, collector road segment) when using the protocol of substitution and rescheduling of observation sites pursuant to paragraph (c) of this section.

(c) *Requirements for substitution and rescheduling of observation sites.* The survey design shall include at a minimum the following protocols:

(1) *Protocol when observation site is temporarily unavailable for data collection.*

(i) Observers shall return to the observation site at another time provided that it is on the same day of the week and at same time of the day or select an alternate observation site, as described in paragraph (b)(2) of this section, provided the data are collected on the same day and at approximately the same time as the originally-scheduled observation site.

(ii) The original observation site must be used for future data collections.

(2) *Protocol when observation site is permanently unavailable for data collection.*

(i) Except as provided in paragraph (c)(2)(ii), another observation site shall be selected in accordance with paragraph (b) of this section.

(ii) If it is not feasible to select another observation site based on probability sampling for the current data collection, an alternate observation site, as described in paragraph (b)(2) of this section, may be selected, provided the data is collected on the same day and at approximately the same time as the originally-scheduled observation site.

(iii) For future data collections, another observation site must be selected based on probability sampling in accordance with paragraph (b) of this section.

(d) *Precision requirement.* The estimated seat belt use rate must have a standard error of no more than 2.5 percentage points.

§ 1340.6 Assignment of observation times.

(a) *Daylight hours.* All daylight hours between 7 a.m. and 6 p.m. for all days of the week shall be eligible for inclusion in the sample.

(b) *Random assignment.* Except as provided in paragraph (c) of this section, the day-of the week and time-of-the-day shall be randomly assigned to observation sites.

(c) *Grouping of observation sites in close geographic proximity.* Observations sites in close geographic proximity may be grouped to reduce data collection burdens if:

(1) The first assignment of an observation site within the group is randomly selected; and

(2) The assignment of other observations sites within the group is made in a manner that promotes administrative efficiency and timely completion of the survey.

§ 1340.7 Observation procedures.

(a) *Data collection dates.* All survey data shall be collected through direct observation completely within the calendar year for which the Statewide seat belt use rate will be reported. Except as provided in § 1340.5(c), the survey shall be conducted in accordance to the schedule determined in § 1340.6.

(b) *Roadway and direction(s) of observation*—

(1) *Intersections.* If an observation site is located at an intersection of road segments, the data shall be collected from the sampled road segment, not the intersecting road segment(s).

(2) *Roads with two-way traffic.* If an observation site is located on a road with traffic traveling in two directions, one or both directions of traffic may be observed, provided that—

(i) If only one direction of traffic is observed, that direction shall be chosen randomly;

(ii) If both directions of traffic are observed at the same time, States shall assign at least one person to observe each direction of traffic.

(c) *Vehicle coverage.* Data shall be collected by direct observation from all passenger motor vehicles, including but not limited to passenger motor vehicles used for commercial purposes, passenger motor vehicles exempt from the State's seat belt use law and passenger motor vehicles bearing out-of-State license plates.

(d) *Occupant coverage.* Data shall be collected by direct observation of all drivers and right front passengers, including right front passengers in booster seats, but excluding right front passengers in child safety seats. Observers shall record a person as—

(1) Belted if the shoulder belt is in front of the person's shoulder;

(2) Unbelted if the shoulder belt is not in front of the person's shoulder;

(3) Unknown if it cannot reasonably be determined whether the driver or right front passenger is belted.

(e) *Survey data.* At a minimum, the seat belt use data to be collected by direct observation shall include—

(1) Seat belt status of driver;

(2) Presence of right front passenger; and

(3) Seat belt status of right front passenger, if present.

(f) *Data collection environment.* When collecting seat belt survey data—

(1) Observers shall not wear law enforcement uniforms;

(2) Police vehicles and persons in law enforcement uniforms shall not be positioned at observation sites;

(3) Communications by signage or any other means that a seat belt survey is being or will be conducted shall not be present in the vicinity of the observation site.

§ 1340.8 Quality control.

(a) *Quality control monitors.* Monitors shall conduct random, unannounced visits to no less than five percent of the observation sites for the purpose of quality control. The same individual shall not serve as both the observer and quality control monitor at the same observation site at the same time.

(b) *Training.* Observers and quality control monitors involved in seat belt use surveys shall have received training in data collection procedures within the past twelve months. Observers and quality control monitors shall be trained in the observation procedures of § 1340.7 and in the substitution and rescheduling requirements of § 1340.5(c).

(c) *Statistical review.* Survey results shall be reviewed and approved by a survey statistician, i.e., a person with knowledge of the design of probability-based multi-stage samples, statistical estimators from such designs, and variance estimation of such estimators.

§ 1340.9 Computation of estimates.

(a) *Data used.* Except as otherwise provided in this section, all data collected pursuant to § 1340.7(e) shall be used, without exclusion, in the computation of the Statewide seat belt use rate, standard error, and nonresponse rate.

(b) *Data editing.* Known values of data contributing to the Statewide seat belt use rate shall not be altered in any manner.

(c) *Imputation.* Unknown values of variables shall not be imputed unless NHTSA has approved the State's imputation procedure prior to data analysis.

(d) *Sampling weights.* The estimation formula shall weight observed data by the sampling weights as required by the sample design and any subsequent adjustments.

(e) *Sampling weight adjustments for observation sites with no usable data.* States shall include a procedure to adjust the sampling weights for observation sites with no usable data, including observation sites where no data were collected and observation sites where data were discovered to be falsified.

(f) *Nonresponse rate.*

(1) Subject to paragraph (f)(2) of this section, the nonresponse rate for the entire survey shall not exceed 10 percent for the ratio of the total number of recorded unknown values of belt use to the total number of drivers and passengers observed.

(2) The State shall include a procedure for collecting additional observations in the same calendar year of the survey to reduce the nonresponse rate to no more than 10 percent if the nonresponse rate in paragraph (f)(1) of this section exceeds 10 percent.

(g) *Variance estimation.*

(1) Subject to paragraph (g)(2) of this section, the estimated standard error, using the variance estimation method in the survey design, shall not exceed 2.5 percentage points.

(2) If the standard error exceeds this threshold, additional observations shall be conducted in the same calendar year of the survey until the standard error does not exceed 2.5 percentage points.

Subpart C—Administrative Requirements

§ 1340.10 Submission and approval of seat belt survey design.

(a) *Contents:* The following information shall be included in the State's seat belt survey design submitted for NHTSA approval:

(1) *Sample design*—The State shall–

(i) Define all sampling units, with their measures of size, as provided in § 1340.5(a);

(ii) Specify the data source of the sampling frame of road segments (observation sites), as provided in § 1340.5(a)(2)(i);

(iii) Specify any exclusions that have been applied to the sampling frame, as provided in § 1340.5(a)(2)(iii);

(iv) Define what stratification was used at each stage of sampling and what methods were used for allocation of the sample units to the strata;

(v) Specify the method used to select the road segments for observation sites as provided by § 1340.5(b).

(vi) List all observation sites and their probabilities of selection;

(vii) Explain how the sample sizes were determined, as provided in § 1340.5(d);

(viii) Describe how observation sites were assigned to observation time periods, as provided in § 1340.6; and

(ix) Identify the name and describe the qualifications of the State survey statistician meeting the requirements in § 1340.8(c).

(2) *Data collection*—The State shall—

(i) Define an observation period;

(ii) Specify the procedures to be implemented to reschedule or substitute observation sites when data collection is not possible on the date and time assigned, as provided in § 1340.5(c);

(iii) Specify the procedures for collecting additional data to reduce the nonresponse rate, as provided in § 1340.9(f)(2);

(iv) Describe the data recording procedures; and

(v) Specify the number of observers and quality control monitors.

(3) *Estimation*—The State shall—

(i) Describe how seat belt use rate estimates will be calculated;

(ii) Describe how variances will be estimated, as provided in § 1340.9(g);

(iii) Specify imputation methods, if any, that will be used, as provided in § 1340.9(c);

(iv) Specify the procedures to adjust sampling weight for observation sites with no usable data, as provided in § 1340.9(e); and

(v) Specify the procedures to be followed if the standard error exceeds 2.5 percentage points, as required in § 1340.5(g).

(b) *Survey design submission deadline.* For calendar year 2012, States shall submit proposed survey designs to NHTSA for approval no later than January 3, 2012. Thereafter, States should submit survey designs for NHTSA approval as specified in § 1340.11.

§ 1340.11 Post-approval alterations to survey design.

After NHTSA approval of a survey design, States shall submit for NHTSA approval any proposed alteration to their survey design, including, but not limited to, sample design, seat belt use rate estimation method, variance estimation method and data collection protocols, at least three months before data collection begins.

§ 1340.12 Re-selection of observation sites.

(a) *Re-selection of observation sites.* States shall re-select observation sites using updated sampling frame data, as described in § 1340.5(a), no less than once every five years.

(b) *Re-selection submission deadline.* States shall submit updated sampling frame data meeting the requirements of § 1340.5(a) for NHTSA approval no later than March 1 of the re-selection year.

§ 1340.13 Annual reporting requirements.

(a) *Survey data.* States shall report the following information no later than March 1 of each year for the preceding calendar year's seat belt use survey,

using the reporting form in Appendix A to this part:

(1) Spreadsheet in electronic format containing the raw data for each observation site and the observation site weight;

(2) Statewide seat belt use rate estimate and standard error;

(3) Nonresponse rate for the variable "belt use," as provided in § 1340.9(f);

(4) Dates of the reported data collection;

(5) Observation sites, identified by type of observation site (i.e., observation site selected in the original survey design, alternate observation site selected subsequent to the original survey design), and by characteristics of the observation site visit (i.e., at least one vehicle observed, no vehicles observed); and

(6) Name of the State survey statistician meeting the qualification requirements, as provided in § 1340.8(c).

(b) *Certifications by Governor's Highway Safety Representative.* The Governor's Highway Safety Representative (GR) or if delegated in writing, the Coordinator of the State Highway Safety Office, shall sign the reporting form certifying that—

(1) _____ has been designated by the Governor as the GR, and if applicable, the GR has delegated the authority to sign the certification in writing to _____, the Coordinator of the State Highway Safety Office;

(2) The reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340;

(3) The survey design has remained unchanged since the survey was approved by NHTSA; and

(4) _____, a qualified survey statistician, reviewed the seat belt use rate reported in Part A (of the certification) and information reported in Part B and has determined that they meet the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340.

(d) *Audits.* NHTSA may audit State survey results and data collection. The State shall retain the following records for five years and make them available to NHTSA in electronic format within four weeks of request:

(1) Computation programs used in the sample selection;

(2) Computation programs used to estimate the Statewide seat belt use rate and standard errors for the surveys conducted since the last NHTSA approval of the sample design; and

(3) Sampling frame(s) for design(s) used since the last NHTSA approval of the sample design.

APPENDIX A TO PART 1340—STATE SEAT BELT USE SURVEY REPORTING FORM

PART A: To be completed by the Governor's Highway Safety Representative (GR) or if applicable, the Coordinator of the State Highway Safety Office.

State: _____

Calendar Year of Survey: _____

Statewide Seat Belt Use Rate: _____

I hereby certify that:

- _____ has been designated by the Governor as the State's Highway Safety Representative (GR), and if applicable, the GR has delegated the authority to sign the certification in writing to _____, the Coordinator of the State Highway Safety Office.
- The reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340.
- The survey design has remained unchanged since the survey was approved by NHTSA.
- _____, a qualified survey statistician, has reviewed the seat belt use rate reported above and information reported in Part B and has determined that they meet the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340.

_____
Signature

_____
Date

_____
Printed name of signing official

PART B—DATA COLLECTED AT OBSERVATION SITES

Site ID	Site type [1]	Date observed	Sample weight	Number of drivers	Number of front Passengers	Number of occupants [2] belted	Number of occupants unbelted	Number of occupants with unknown belt use
Total								

Standard Error of Statewide Belt Use Rate [3] _____

Nonresponse Rate, as provided in § 1340.9(f)

Nonresponse rate for the survey variable seat belt use: _____

[1] Identify if the observation site is an original observation site or an alternate observation site.

[2] Occupants refer to both drivers and passengers.

[3] The standard error may not exceed 2.5 percent.

Issued on: March 28, 2011.

David L. Strickland,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 2011–7632 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9519]

RIN 1545–BF33

Taxpayer Assistance Orders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to taxpayer

assistance orders. These regulations reflect changes to the law made by the Taxpayer Bill of Rights II, the Internal Revenue Service Restructuring and Reform Act of 1998, the Community Renewal Tax Relief Act of 2000, and the American Jobs Creation Act of 2004. The final regulations affect taxpayers in cases where a taxpayer assistance order is being considered or issued.

DATES: *Effective date:* These regulations are effective on April 1, 2011.

Applicability date: For dates of applicability, see *§ 301.7811–1*(f).

FOR FURTHER INFORMATION CONTACT: Janice R. Feldman, (202) 622–8488 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations contain rules related to taxpayer assistance orders under sections 7811 of the Internal Revenue Code (Code). These regulations are necessary to reflect changes to the law made by the Taxpayer Bill of Rights II (TBOR 2), the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), the Community Renewal Tax Relief Act of 2000, and the American Jobs Creation Act of 2004. On July 27, 2009, a notice of proposed rulemaking (REG–152166–05) relating to taxpayer assistance orders was published in the **Federal Register** (74 FR 36973). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted without substantive change by this Treasury decision with one exception. *Example 3* in § 301.7811–1(a)(4)(iv) of the regulations illustrating significant costs was revised slightly.

Furthermore, § 301.7811–1(g) of the final regulations (TD 8403) published on March 23, 1992, in the **Federal Register** (57 FR 9975) defined the term "Ombudsman." After these final regulations were published, section 101 of TBOR 2, Public Law 104–168, 110 Stat. 1452 (1996), amended section 7811 by changing the name of the "Ombudsman" to the "Taxpayer Advocate." Section 1102 of RRA 98, Public Law 105–206, 112 Stat. 685 (1998), further amended section 7811, by replacing "Taxpayer Advocate" with "National Taxpayer Advocate." Thus, § 301.7811–1(g), which defined the obsolete term "ombudsman" is being removed by these final regulations as it is obsolete. Section 301.7811–1(e) of the existing final regulations (TD 8403), which contains the term "ombudsman" and concerns the suspension of the statute of limitations, was not revised by these final regulations as changes to that section may involve changes to IRS computer processing systems. Thus, all references to the term "ombudsman" in § 301.7811–1(e) should, consistent with the current version of the statute, be construed as referring to the "National Taxpayer Advocate." Possible revisions to § 301.7811–1(e) will be considered at a later date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The information required under this Treasury decision is already required by the current regulations and the Form 911, "Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)." In addition, the Form 911 takes minimal time and expense to prepare, and the filing of a Form 911 is optional. Therefore, preparing the Form 911 does not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these regulations will not have a significant economic impact on a substantial number of small entities. Furthermore, the substance of the regulations does not concern the Form 911, but the procedures the Taxpayer Advocate Service (TAS) or the Internal Revenue Service (IRS) must follow with respect to taxpayer assistance orders. Therefore, any burden created by these regulations is on the TAS or IRS, not taxpayers. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Janice R. Feldman, Office of the Special Counsel (National Taxpayer Advocate Program) (CC:NTA).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of the Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.7811–1 is amended by revising paragraphs (a), (b), (c) and (d), removing paragraphs (f), (g), (h) and redesignating paragraph (h) as (f) and revising newly designated paragraph (f) to read as follows:

§ 301.7811–1 Taxpayer assistance orders.

(a) *Authority To Issue*—(1) *In general.* When an application for a taxpayer assistance order (TAO) is filed by the taxpayer or the taxpayer's authorized representative in the form, manner and time specified in paragraph (b) of this section, the National Taxpayer Advocate (NTA) may issue a TAO if, in the determination of the NTA, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service (IRS), including action or inaction on the part of the IRS.

(2) *The National Taxpayer Advocate defined.* The term *National Taxpayer Advocate* includes any designee of the NTA, such as a Local Taxpayer Advocate.

(3) *Issuance without a written application.* The NTA may issue a TAO in the absence of a written application by the taxpayer under section 7811(a).

(4) *Significant hardship*—(i) *Determination required.* Before a TAO may be issued, the NTA is required to make a determination regarding significant hardship.

(ii) *Term defined.* The term *significant hardship* means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the IRS. Significant hardship includes situations in which a system or procedure fails to operate as intended or fails to resolve the taxpayer's problem or dispute with the IRS. A significant hardship also includes, but is not limited to:

(A) An immediate threat of adverse action;

(B) A delay of more than 30 days in resolving taxpayer account problems;

(C) The incurring by the taxpayer of significant costs (including fees for

professional representation) if relief is not granted; or

(D) Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

(iii) *A delay of more than 30 days in resolving taxpayer account problems is further defined.* A delay of more than 30 days in resolving taxpayer account problems exists under the following conditions:

(A) When a taxpayer does not receive a response by the date promised by the IRS; or

(B) When the IRS has established a normal processing time for taking an action and the taxpayer experiences a delay of more than 30 days beyond the normal processing time.

(iv) *Examples of significant hardship.* The provisions of this section are illustrated by the following examples:

Example 1. Immediate threat of adverse action. The IRS serves a levy on A's bank account. A needs the bank funds to pay for a medically necessary surgical procedure that is scheduled to take place in one week. If the levy is not released, A will lack the funds necessary to have the procedure. A is experiencing an immediate threat of adverse action.

Example 2. Delay of more than 30 days. B files a Form 4506, "Request for a Copy of Tax Return." B does not receive the photocopy of the tax return after waiting more than 30 days beyond the normal time for processing. B is experiencing a delay of more than 30 days.

Example 3. Significant costs. The IRS sends XYZ, Inc. a notice requesting payment of the outstanding employment taxes and penalties owed by XYZ, Inc. The notice indicates that XYZ, Inc. has small employment tax balances with respect to 12 employment tax quarters totaling $10X. XYZ, Inc. provides documentation to the IRS which it contends shows that if all payments were applied to each quarter correctly, there would be no balance due. The IRS requests additional records and documentation. Because there are 12 quarters involved, to comply with this request XYZ, Inc. asserts that it will need to hire an accountant, who estimates he will charge at least $5X to organize all the records and provide a detailed analysis of how to apply the deposits and payments. XYZ, Inc. is facing significant costs.

Example 4. Irreparable injury. D has arranged with a bank to refinance his mortgage to lower his monthly payment. D is unable to make the current monthly payment. Unless the monthly payment amount is lowered, D will lose his residence to foreclosure. The IRS refuses to subordinate the Federal tax lien, as permitted by section 6325(d), or discharge the property subject to the lien, as permitted by section 6325(b). As a result, the bank will not allow D to refinance. D is facing an irreparable injury if relief is not granted.

(5) *Distinction between significant hardship and the issuance of a TAO.* A finding that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS will not automatically result in the issuance of a TAO. After making a determination of significant hardship, the NTA must determine whether the facts and the law support relief for the taxpayer. In cases where any IRS employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the NTA shall construe the factors taken into account in determining whether to issue a TAO in the manner most favorable to the taxpayer.

(b) *Generally.* A TAO is an order by the NTA to the IRS. The IRS will comply with a TAO unless it is appealed and then modified or rescinded by the NTA, the Commissioner, or the Deputy Commissioner. If a TAO is modified or rescinded by the Commissioner or the Deputy Commissioner, a written explanation of the reasons for the modification or rescission must be provided to the NTA. The NTA may not make a substantive determination of any tax liability. A TAO is also not intended to be a substitute for an established administrative or judicial review procedure, but rather is intended to supplement existing procedures if a taxpayer is about to suffer or is suffering a significant hardship. A request for a TAO shall be made on a Form 911, "Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)" (or other specified form) or in a written statement that provides sufficient information for the Taxpayer Advocate Service (TAS) to determine the nature of the harm or the need for assistance. A taxpayer's right to administrative or judicial review will not be diminished or expanded in any way as a result of the taxpayer's seeking assistance from TAS.

(c) *Contents of taxpayer assistance orders.* After establishing that the taxpayer is facing significant hardship and determining that the facts and law support relief to the taxpayer, the NTA may issue a TAO ordering the IRS within a specified time to—

(1) *Release a levy.* Release levied property (to the extent that the IRS may by law release such property); or

(2) *Take certain other actions.* Cease any action, take any action as permitted by law, or refrain from taking any action with respect to a taxpayer pursuant to—

(i) Chapter 64 (relating to collection);

(ii) Chapter 70, subchapter B (relating to bankruptcy and receiverships);

(iii) Chapter 78 (relating to discovery of liability and enforcement of title); or

(iv) Any other provision of the internal revenue laws specifically described by the NTA in the TAO.

(3) *Expedite, review, or reconsider an action at a higher level.* Although the NTA may not make the substantive determination, a TAO may be issued to require the IRS to expedite, reconsider, or review at a higher level an action taken with respect to a determination or collection of a tax liability.

(4) *Examples.* The following examples assume the existence of significant hardship:

Example 1. J contacts a Local Taxpayer Advocate because a wage levy is causing financial difficulties. The NTA determines that the levy should be released as it is causing economic hardship (within the meaning of section 6343(a)(1)(D) and § 301.6343–1(b)(4)). The NTA may issue a TAO ordering the IRS to release the levy in whole or in part by a specified date.

Example 2. The IRS rejects K's offer in compromise. K files a Form 911, "Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)." The NTA discovers facts that support acceptance of the offer in compromise. The NTA may issue a TAO ordering the IRS to reconsider its rejection of the offer or to review the rejection of the offer at a higher level. The TAO may include the NTA's analysis of and recommendation for resolving the case.

Example 3. L files a protest requesting Appeals consideration of IRS's proposed denial of L's request for innocent spouse relief. Appeals advises L that it is going to issue a Final Determination denying the request for innocent spouse relief. L files a Form 911, "Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)." The NTA reviews the administrative record and concludes that the facts support granting innocent spouse relief. The NTA may issue a TAO ordering Appeals to refrain from issuing a Final Determination and reconsider or review at a higher level its decision to deny innocent spouse relief. The TAO may include the NTA's analysis of and recommendation for resolving the case.

(d) *Issuance.* A TAO may be issued to any office, operating division, or function of the IRS. A TAO shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as the order applies to IRS employees. A TAO will not be issued to IRS Criminal Investigation division (CI), or any successor IRS division responsible for the criminal investigation function, if the action ordered in the TAO could reasonably be expected to impede a criminal investigation. CI will determine whether the action ordered in the TAO could reasonably be expected to impede an investigation. Generally, a

TAO may not be issued to the Office of Chief Counsel.

* * * * *

(f) *Effective/applicability date.* These regulations are applicable for TAOs issued on or after April 1, 2011, except that paragraph (e) of this section is applicable beginning March 20, 1992.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: March 25, 2011.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–7770 Filed 3–31–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 306, 356, 357, and 363

U.S. Securities; Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Book-Entry Treasury Bonds, Notes and Bills Held in Treasury/Reserve Automated Debt Entry System (TRADES) and Legacy Treasury Direct; Securities Held in TreasuryDirect

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: In order to reduce costs and duplication of systems, the Department of the Treasury (Treasury) is limiting options available in its Legacy Treasury Direct system. New customer accounts will no longer be opened and transfers of securities from other book-entry systems will no longer be accepted. Treasury also intends to limit the securities that will be available for purchase or reinvestment in existing accounts.

DATES: *Effective date:* May 1, 2011.

ADDRESSES: You can download this Final Rule at the following Internet addresses: *http://www.publicdebt.treas.gov, http://www.gpo.gov,* or *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elisha Whipkey, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Lisa Martin, Attorney-Adviser; Mary Schaffer, Attorney-Adviser; Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *lisa.martin@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: Legacy Treasury Direct® is a book-entry, non-Internet-based system established in 1986 for customers to buy, hold, and conduct permitted transactions in eligible marketable Treasury securities directly with Treasury rather than indirectly through an intermediary such as a dealer or a depository institution (51 FR 18260–01 (May 16, 1986) (codified at 31 CFR part 357)). Legacy Treasury Direct customers conduct transactions in paper form, although certain transactions can be made through an Internet interface or through an automated phone system.

In 2002, Treasury launched TreasuryDirect®, an Internet-based system for purchasing, holding, and conducting permitted transactions in eligible Treasury securities in book-entry form directly with Treasury rather than indirectly through an intermediary (67 FR 64276–01 (Oct. 17, 2002) (codified at 31 CFR part 363)). TreasuryDirect allows customers to invest in both savings bonds and marketable Treasury securities—Treasury bills, notes, bonds, and inflation-protected securities (TIPS)—using one Web-based account. In TreasuryDirect, customers can purchase securities and manage their holdings online and can conduct most transactions without assistance.

When TreasuryDirect was implemented, the goal was to provide an up-to-date system that would eventually become Treasury's only system for holding marketable securities directly with Treasury. It remains Treasury's long-term plan to consolidate all retail sales of marketable Treasury securities in one system to avoid duplication of services and to create an all-electronic, cost-effective environment for holding marketable Treasury securities directly with Treasury. By gradually eliminating redundant systems and eventually consolidating all directly-held marketable securities into one system, Treasury will realize savings in administrative costs, and customers will be able to manage their accounts independently.

As a step toward achieving this goal, Treasury will no longer accept the establishment of new accounts in Legacy Treasury Direct or transfers of marketable securities into existing Legacy Treasury Direct accounts, effective May 1, 2011. Concurrently, Treasury intends to limit the opportunities for purchasing and reinvesting in new securities in Legacy Treasury Direct by reducing the number of securities offered for auction that are eligible to be held in Legacy Treasury Direct. Treasury further intends to discontinue all offerings of securities eligible to be held in Legacy Treasury Direct by November 2012.

For now, customers with existing Legacy Treasury Direct accounts can continue to hold and make permitted transactions in securities in those accounts. Current Legacy Treasury Direct account holders will be encouraged to transfer their holdings to accounts in TreasuryDirect. Customers will be provided with information about creating TreasuryDirect accounts and the transfer process, and assistance will be available for those choosing to make the transition to TreasuryDirect.

Procedural Requirements

Executive Order 12866. This rule is not a significant regulatory action pursuant to Executive Order 12866.

Administrative Procedure Act (APA). Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule.

Regulatory Flexibility Act. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply to this rule because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment.

Paperwork Reduction Act (PRA). There is no new collection of information contained in this final rule that would be subject to the PRA, 44 U.S.C. 3501 *et seq.* Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The Office of Management and Budget already has approved all collections of information for these parts (OMB No. 1535–0059, OMB No. 1535–0112, OMB No. 1535–0068, and OMB No. 1535–0138).

Congressional Review Act (CRA). This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.,* because it is a minor amendment that is expected to decrease costs for taxpayers; therefore, this rule is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule may take immediate effect after we submit a copy of it to Congress and the Comptroller General.

List of Subjects

31 CFR Part 306

Government securities.

31 CFR Part 356

Bonds, Federal Reserve system, Government securities, Securities.

31 CFR Part 357

Banks, Banking, Bonds, Electronic funds transfers, Government securities, Reporting and recordkeeping requirements.

31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 306—GENERAL REGULATIONS GOVERNING U.S. SECURITIES

■ 1. The authority citation for part 306 continues to read as follows:

Authority: 31 U.S.C. Chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

■ 2. Revise § 306.23 to read as follows:

§ 306.23 Securities eligible to be held in the Legacy Treasury Direct® Book-entry Securities System.

(a) *Eligible issues.* The Secretary has published in the **Federal Register** notices describing Treasury issues of bonds and notes issued before August 1, 1986, that are eligible for conversion to the Legacy Treasury Direct book-entry securities system.

(b) *Conversion of Registered Security to book-entry form to be held in Legacy Treasury Direct.* To convert a registered security to book-entry form to be held in Legacy Treasury Direct, the owner must contact the Bureau of the Public Debt, P.O. Box 426, Parkersburg, West Virginia 26106–0426, for instructions. A security that has been converted to book-entry form in Legacy Treasury Direct shall be subject to subpart C and other applicable portions of 31 CFR part 357, and the provisions of 31 CFR part 306 shall no longer apply.

(c) Securities held under subpart O of this part may not be transferred to Legacy Treasury Direct.

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

■ 3. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.;* 12 U.S.C. 391.

■ 4. Amend § 356.2 to revise the definition of "*Book-entry security*" to read as follows:

§ 356.2 What definitions do I need to know to understand this part?

* * * * *

Book-entry security means a security that is issued or maintained as an accounting entry or electronic record in either the commercial book-entry system or in one of Treasury's two direct-hold systems—TreasuryDirect® or Legacy Treasury Direct®. (See § 356.4.)

* * * * *

■ 5. Amend § 356.4 by revising the heading and the first three sentences of the introductory text to read as follows:

§ 356.4 What are the book-entry systems in which auctioned Treasury securities may be issued or maintained?

There are three book-entry securities systems—the commercial book-entry system, TreasuryDirect®, and Legacy Treasury Direct®—into which we issue marketable Treasury securities. We maintain and transfer securities in these three book-entry systems (except that securities may not be transferred into the Legacy Treasury Direct system) at their par amount. Par amounts of Treasury inflation-protected securities do not include adjustments for inflation. Securities may be transferred from one system to the other (except that securities may not be transferred into the Legacy Treasury Direct system), unless the securities are not eligible to be held in the receiving system. * * *

* * * * *

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS HELD IN TREASURY/RESERVE AUTOMATED DEBT ENTRY SYSTEM (TRADES) AND LEGACY TREASURY DIRECT

■ 6. The authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

■ 7. Amend § 357.0 by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 357.0 Book-entry systems.

* * * * *

(b) *Transferability between Legacy Treasury Direct and other systems.* A Treasury security maintained in Legacy Treasury Direct may be transferred to an account in TRADES or to an account in TreasuryDirect in accordance with § 357.22(a). Securities may not be transferred to Legacy Treasury Direct from other systems.

§ 357.2 [Amended]

■ 8. Amend § 357.2 by removing the words "to be maintained in the commercial book-entry system, Legacy Treasury Direct, or TreasuryDirect" from the definition of "*Original issue*".

■ 9. Amend § 357.20 by:

■ a. Revising the first sentence and removing the second and third sentences of paragraph (c);

■ b. Revising paragraphs (1)(a) and (b) of footnote 1 to paragraph (e); and

■ c. Adding paragraph (h) to read as follows:

§ 357.20 Securities account in Legacy Treasury Direct®.

* * * * *

(c) *Account master record.* In order for a security to be maintained in Legacy Treasury Direct, the account owner must have previously established an account master record, except that a new account may be established for the conversion of a definitive security pursuant to 31 CFR 306.23. * * *

* * * * *

(e) * * *

[1] * * *

(1) * * *

(a) If a bill was deposited in Legacy Treasury Direct at original issue, the price shown will be the issue price.

(b) If a bill was transferred to Legacy Treasury Direct from TRADES, the price shown will be that included in the transfer wire or supplied subsequently by the bill owner. If a price was not furnished, the price shown will be the weighted average price of the bill of the longest maturity having the identical CUSIP number.

* * * * *

(h) *Closing an account.* If a Legacy Treasury Direct account has no holdings, we reserve the right to close the account.

■ 10. Amend § 357.21 by revising the next to last sentence of paragraph (b)(2)(i)(A) to read as follows:

§ 357.21 Registration.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) Without right of survivorship. * * * Any registration which purports, by its terms, to preclude the right of survivorship, or any registration in the names of two persons without indicating whether survivorship rights attach (other than a registration under paragraph (b)(2)(ii) of this section), will

be presumed to be ownership without right of survivorship. * * *

* * * * *

■ 11. Amend § 357.22 by revising the second sentence of paragraph (a) and revising paragraph (a)(3)(i) to read as follows:

§ 357.22 Transfers.

(a) *General.* * * * A security may be transferred from an account in Legacy Treasury Direct® to an account in the commercial book-entry system or to an account in TreasuryDirect®. * * *

* * * * *

(3) *When transfer effective—(i) Transfer within Legacy Treasury Direct.* A transfer of a security within Legacy Treasury Direct is effective when an appropriate entry is made in the name of the transferee on the Legacy Treasury Direct records.

* * * * *

■ 12. Amend § 357.32 by revising the first two sentences to read as follows:

§ 357.32 Submission of transaction requests; further information.

Transaction requests and requests for forms and information may be submitted to any Federal Reserve Bank currently serving as a Treasury Retail Securities Site or to the Bureau of the Public Debt, Legacy Treasury Direct®, P.O. Box 426, Parkersburg, West Virginia 26106–0426. A list of the Federal Reserve Banks currently serving as Treasury Retail Securities Sites is available upon request to the Bureau. * * *

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN TREASURYDIRECT

■ 13. The authority citation for part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.;* 31 U.S.C. 3121, *et seq.*

■ 14. Amend § 363.4 by revising the heading and the first sentence in paragraph (b) to read as follows:

§ 363.4 How is TreasuryDirect® different from the Legacy Treasury Direct® system and the commercial book-entry system?

* * * * *

(b) *Legacy Treasury Direct.* The Legacy Treasury Direct system is a non-Internet-based book-entry system maintained by Treasury for holding and conducting permitted transactions in eligible marketable Treasury securities as book-entry products. * * *

* * * * *

■ 15. Amend § 363.6 by revising the definitions of "*Legacy Treasury Direct*" and "*Transfer*" to read as follows:

§ 363.6 What special terms do I need to know to understand this part?

* * * * *

Legacy Treasury Direct® system is a non-Internet-based book-entry system maintained by Treasury since 1986 for holding and conducting permitted transactions in marketable Treasury securities directly with Treasury as book-entry products. (See § 363.4.)

* * * * *

Transfer is a transaction to move a security, or a portion of a security, to or from a TreasuryDirect account. (See § 363.26.)

* * * * *

■ 16. Amend § 363.26 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 363.26 What is a transfer?

(a) * * *

(2) Move a marketable Treasury security to or from a TreasuryDirect account and an account in the commercial book-entry system;

(3) Move a marketable Treasury security to a TreasuryDirect account from a Legacy Treasury Direct® account.

* * * * *

§ 363.27 [Amended]

■ 17. Amend § 363.27 by removing the words "Legacy Treasury Direct or" from the second sentence of paragraph (e)(4).

§ 363.208 [Amended]

■ 18. Amend § 363.208 by removing the words "to an account in Legacy Treasury Direct or".

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2011–7739 Filed 3–31–11; 8:45 am]

BILLING CODE 4810–39–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2010–0680; FRL–9283–6]

State of California; Request for Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards From Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of California's Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning and Water-Repelling Operations, Requirements for Perc Manufacturers, and Requirements for Perc Distributors to be implemented and enforced in place of the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities. EPA is taking this action under section 112(l) of the Clean Air Act (CAA).

DATES: This rule is effective on May 2, 2011. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on May 2, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0680 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
A. Major Dry Cleaning Sources
B. California District Rules
C. Implementation and Enforcement
IV. Statutory and Executive Order Reviews

I. Proposed Action

On October 6, 2010 (75 FR 61662), EPA proposed to approve California's Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning and Water Repelling Operations, Requirements for Perc Manufacturers, and Requirements for Perc Distributors, sections 93109, 93109.1, and 93109.2, Title 17 of the California Code of Regulations (amended dry cleaning ATCM). The amended dry cleaning ATCM became State law on December 27, 2007, and was submitted by the California Air Resources Board (CARB) to be implemented and enforced in lieu of the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, 40 CFR Part 63, Subpart M (dry cleaning NESHAP), and California's previously approved original dry cleaning ATCM. Because EPA believes

California's request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93, we are approving California's amended dry cleaning ATCM. Our proposed action contains more information on the regulations and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment that CARB's request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93. Therefore, as authorized in CAA section 112(l), EPA is fully approving California's amended dry cleaning ATCM as proposed on October 6, 2010.

A. Major Dry Cleaning Sources

Under the dry cleaning NESHAP, dry cleaning facilities are divided between major sources and area sources. CARB's request for approval includes only those provisions of the dry cleaning NESHAP that apply to area sources. Thus, dry cleaning facilities that are major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the CAA Title V operating permit program.

B. California District Rules

After the May 21, 1996, approval of California's original dry cleaning ATCM, the following California district rules were approved in place of the dry cleaning NESHAP:

District	Rule	Adoption date	Approval date
San Luis Obispo County APCD.	432: Perchloroethylene Dry Cleaning Operations	11/13/1996	12/10/1997, (62 FR 65022).
South Coast AQMD	1421: Control of Perchloroethylene Emissions from Dry Cleaning Systems.	6/13/1997	5/13/1998, (63 FR 26463).
Yolo-Solano AQMD	9.7: Perchloroethylene Dry Cleaning Operations	11/13/1998	1/28/1999, (64 FR 4298).

California's amended dry cleaning ATCM will replace the above rules from San Luis Obispo County Air Pollution Control District and Yolo-Solano County Air Quality Management District as the Federally-enforceable regulation in those districts for perchloroethylene (perc) dry cleaning area sources. In the future, a district may request approval for a local rule under the provisions of 40 CFR 63.93. Until a request for delegation of a local regulation is submitted and approved by EPA, California's amended dry cleaning ATCM will serve as the Federally applicable regulation, with the one exception discussed below.

In the South Coast Air Quality Management District (SCAQMD), the previously approved version of Rule 1421 will remain in place as the Federally-enforceable regulation for perc dry cleaning area sources. The SCAQMD has asked to be excluded from the CARB request for delegation and intends to submit an amended version of Rule 1421 in a separate delegation request in the future. Therefore, California's amended dry cleaning ATCM will be the Federally applicable regulation for perc dry cleaning area sources in all districts of California except the SCAQMD.

C. Implementation and Enforcement

This final approval action will establish California's amended dry cleaning ATCM as the Federally-enforceable regulation in California, with the exception of the SCAQMD, for perc dry cleaning area sources. Although California would have primary implementation and enforcement responsibility, EPA would retain the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. The amended dry cleaning ATCM will be the Federally-enforceable standard in California and will be enforceable by the Administrator and citizens under the CAA. However, any provision of California's amended dry cleaning ATCM that allows for the approval of alternative means of emission limitations must also receive approval from EPA before such alternatives can be used (e.g., Sections 93109(d)(27) and (38), and (i)(3)(A)(2)). Additionally, this delegation does not extend to the provisions regarding California's enforcement authorities or its collection of fees as described in Sections 93109.1(c) and 93109.2(c) and (d), Title 17 of the California Code of Regulations. Approval of California's amended dry cleaning ATCM does not in any way limit the enforcement authorities, including the penalty authorities, of the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a State delegation submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7412(l); 40 CFR 63.90. Thus, in reviewing delegation submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

environmental justice in this rulemaking.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Title III of the Clean Air Act as amended, 42 U.S.C. 7412.

Dated: March 3, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 63, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for Part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by revising paragraph (d)(1) to read as follows:

§ 63.14 Incorporations by reference.

(d) * * *

(1) *California Regulatory Requirements Applicable to the Air Toxics Program,* November 16, 2010, IBR approved for § 63.99(a)(5)(ii) of Subpart E of this part.

* * * * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 3. Section 63.99 is amended as follows:

■ a. By revising paragraph (a)(5)(ii) introductory text;

■ b. By revising paragraph (a)(5)(ii)(A) introductory text;

■ c. By revising paragraph (a)(5)(ii)(A)(*1*)(*ii*);

■ d. By adding paragraph (a)(5)(ii)(A)(*1*)(*iii*); and

■ e. By removing and reserving paragraphs (a)(5)(ii)(B) and (D).

§ 63.99 Delegated Federal authorities.

(a) * * *

(5) * * *

(ii) *California approvals other than straight delegation.* Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program,* November 16, 2010, (incorporated by reference as specified in § 63.14) as described as follows:

(A) The material incorporated in Chapter 1 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (California Code of Regulations Title 17, sections 93109, 93109.1, and 93109.2) pertains to the perchloroethylene dry cleaning source category in the State of California, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(*1*) * * *

(*ii*) California is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections 93109(d)(27) or (38), or (i)(3)(A)(2), Title 17 of the California Code of Regulations, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112 of the Clean Air Act.

(*iii*) This delegation does not extend to the provisions regarding California's enforcement authorities or its collection of fees as described in Sections 93109.1(c) or 93109.2(c) and (d), Title 17 of the California Code of Regulations. Approval of the California Code of Regulations, Title 17, sections 93109, 93109.1, and 93109.2 does not in any way limit the enforcement authorities, including the penalty authorities, of the Clean Air Act.

* * * * *

[FR Doc. 2011–7603 Filed 3–31–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of July 1, 2010, on page 1160, in § 80.1466, in paragraph (h)(1), the equation is corrected to read as follows:

§ 80.1466 What are the additional requirements under this subpart for RIN-generating foreign producers and importers of renewable fuels for which RINs have been generated by the foreign producer?

* * * * *

(h) * * *

(1) * * *

Bond = G * $0.01

* * * * *

[FR Doc. 2011–7822 Filed 3–31–11; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9288–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Norwood PCBs Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 is publishing a direct final Notice of Deletion of the Norwood PCBs Superfund Site (Site), located in Norwood Massachusetts from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the Commonwealth of Massachusetts, through the Massachusetts Department of Environmental Protection (MassDEP), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews have been completed. However, this deletion does not preclude future actions under CERCLA.

DATES: This direct final deletion is effective May 31, 2011 unless EPA receives adverse comments by May 2, 2011. If adverse comment(s) are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: keefe.daniel@epa.gov.*
- *Fax:* 1–617–918–0327.
- *Mail:* Daniel Keefe, U.S. EPA Remedial Project Manager, 5 Post Office Square (OSRR07–1), Boston, MA 02109–3912.
- Hand delivery to the following address: Daniel Keefe, 5 Post Office Square (OSRR07–1), Boston, MA 02109. Such deliveries are only accepted during the EPA's normal hours of operation (9 a.m. to 5 p.m.), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at either:

EPA Region 1 Record Center, 5 Post Office Square, Boston, MA 02109, Phone: 1–617–918–1440, Hours: Mon–Fri 8 a.m. to 5 p.m.

Norwood Morrill Memorial Library, 33 Walpole Street, Norwood, MA, Phone: 781–769–0200, Hours: Mon–Thurs 9 a.m. to 9 p.m.; Friday 10 a.m. to 5 p.m.; Saturday 9 a.m. to 5 p.m.; Sunday 2 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Daniel Keefe, Remedial Project Manager, U.S. Environmental Protection Agency Region 1; 5 Post Office Square, Boston, MA 02109; Mailcode: OSRR07–01, or by phone at (617) 918–1327, or by e-mail at *keefe.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 1 is publishing this direct final Notice of Deletion for the Norwood PCBs Superfund site (Site) thus removing the Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective May 31, 2011 unless EPA receives adverse comments by May 2, 2011. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Norwood PCBs Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a

determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth of Massachusetts prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the Federal Register.

(2) EPA has provided the Commonwealth thirty (30) working days for review of this Notice and the parallel Notice of Intent to Delete prior to their publication today, and the Commonwealth, through the MassDEP, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Norwood Record. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Norwood PCBs Superfund Site (CERCLIS No. MAD980670566) is located in Norwood, Massachusetts, approximately 14 miles southwest of the City of Boston. Land use consists predominately of industrial/commercial properties and associated parking areas in an industrial/commercial area. To the north, the Site is bordered by residential properties, to the east by Route 1 and the Dean Street access road, to the south by Dean Street, and to the west by residential properties. The northern portion of the Site consists of a portion of Meadow Brook.

Contamination originated from disposal practices of the parties who owned the property or operated businesses on the Site (the Facility). The former on-site building was constructed in 1942 by Bendix Aviation Corporation, which produced navigational control systems for the U.S. Navy. In October 1947, the land was purchased by Tobe Deutschman Corporation, which manufactured electrical equipment. The property was purchased in 1956 by Cornell-Dubilier Electronics, Inc., which also manufactured electrical equipment at the facility. In January 1960, the property was owned by Maryvale Corporation, and was then purchased by the Friedland brothers. The Friedland brothers leased the property to Federal Pacific Electric Company, which held the lease on the property until October 1979. During the period from 1960 to 1979, Federal Pacific Electric Company operated a business at the Site, and sublet portions of the facility to Cornell-Dubilier Electronics, Inc. and to Arrow Hart Corporation, which also manufactured electrical equipment. In 1979, the Site was subdivided. The northeastern portion of the Site, approximately 9 acres, was purchased by Grant Gear Realty Trust, which leased the facility to Grant Gear Works, Inc., to produce gears for various industries. The southern and western portions of the Site, approximately 16 acres, were purchased by Paul Birmingham, Paul Reardon, and Jack Reardon who further subdivided the property into seven lots and added a new private way (Kerry Place). On the east site of the Site runs Meadow Brook through a property owned by the Town of Norwood which contains a town sewer easement.

In 1983, MassDEP received a call from an abutting resident reporting past industrial waste dumping and contamination in the then vacant field of Kerry Place. As a result, an initial investigation was conducted which confirmed the presence of PCBs. EPA contractors assisted MassDEP with the collection of samples and based on these findings, it was determined that an emergency removal was warranted. EPA removed and disposed (off-site) 518 tons of contaminated soil. During the removal, water samples taken from the storm drain system behind the Grant Gear Building indicated low levels of PCBs. In October 1984, the Site was proposed for inclusion on the NPL (49 FR 40320) and was formally added on June 10, 1986 (51 FR 21054).

Remedial Investigation and Feasibility Study (RI/FS)

The Remedial Investigations/Feasibility Study (RI/FS) was completed in 1989. During the investigation the following media were evaluated: air, surface soil, subsurface soil, dredge piles, Meadow Brook sediments, surface water, groundwater, and the Grant Gear Building. The highest concentration of PCBs in soil was in a former disposal area in the western and northern portions of the Grant Gear property where up to 26,000 parts per million (ppm) were identified. The estimated total volume of contaminated soil in both saturated and unsaturated soil with PCB concentrations greater than 10 ppm was 31,550 cubic yards (yd^3). Soils were also found to be contaminated, although to a lesser extent, with VOCs, SVOCs and metals.

Contaminants released to Meadow Brook included PCBs, VOCs, and metals. Within sediments, the primary transport mechanism for PCBs was the movement of sediment to which the PCBs are attached. PCBs detected in sediment ranged up to 1,100 ppm in Meadow Brook and up to 3,850 ppm in former sediment dredge piles.

With regard to groundwater, contaminants include PCBs, VOCs and SVOCs with the highest concentrations generally being detected west of the former Grant Gear building. Groundwater contamination was detected in both overburden and bedrock aquifers with trichloroethylene having the highest concentration (1,800 parts per billion (ppb)) in overburden and vinyl chloride in bedrock (110 ppb).

Selected Remedy

In September 1989, EPA issued a ROD for the Norwood PCBs site. The Remedial Action Objectives outlined in the 1989 ROD to address contaminated buildings, soils, sediments, and groundwater at the Site are as follows:

- To minimize the continued release of hazardous substances to Meadow Brook.
- To reduce risks to workers associated with direct contact with PCB-contaminated surfaces.
- To reduce risks to workers associated with inhalation of airborne PCBs within the Grant Gear Building.
- Reduce risks posed by direct contact with soil contaminated with PCBs and P AHs.
- Reduce risks posed by incidental ingestion of soils contaminated with PCBs and PAHs.
- Mitigate any future impacts of such remedial activities to Meadow Brook and the surrounding wetland areas.
- Minimize migration of VOCs to groundwater.
- Reduce, within a reasonable time frame, risks to workers posed by inhalation of airborne contaminants volatilized from groundwater.
- Reduce risks to human health and the environment from current and future migration of contaminants in groundwater.

Major components of the 1989 remedy include:

- Decontamination of surfaces of machinery, equipment, and floors within the plant areas of the Grant Gear Building;
- Excavation of approximately 34,000 cubic yards of PCB-contaminated soils and sediments and treatment by solvent extraction;
- Backfilling of soils and sediments to be covered with asphalt or clean fill;
- Construction and operation of a Groundwater Treatment Plant (GWTP) to remediate groundwater;
- Restoration of impacted wetlands;
- Long-term monitoring; and
- Institutional controls (ICs)

As a result of higher than anticipated solvent extraction costs and logistical problems with its implementation, and in consideration of the likely commercial/industrial reuse of the property, EPA issued a ROD Amendment in May 1996. The ROD Amendment included the demolition of the Grant Gear building, the excavation and consolidation of contaminated soils and sediments on site, and the construction of a permanent cap. Soil and sediment clean-up goals were further modified as discussed in the Cleanup Goals section.

In accordance with EPA's 1996 Final Ground Water Use and Value Determination Guidance, in May 2001, MassDEP submitted a "low" use and value determination for the groundwater at and in the vicinity of the Site. This determination was made based on the aquifer's classification as a non-potential drinking water source area, as well as the fact that nearby residential and commercial properties are supplied by public, municipal drinking water sources.

As a result of MassDEP's "low" use and value determination, the contaminant exposure pathways and exposure assumptions used for the ROD were re-evaluated. Accordingly, supplemental risk assessment activities were initiated in 2001 and were completed in 2004. As the result of these assessments, revised groundwater clean-up levels, or risk-based action levels (RBALs), were calculated. These were subsequently adopted as groundwater Cleanup goals in a 2005 Explanation of Significant Differences (ESD). Current groundwater clean-up goals are listed in the Clean-up Goal section.

Response Actions

Remedial activities were completed in a single Operable Unit (OU); however, the activities consisted of the following phases: Phase 1 was completed by the EPA and consisted of groundwater treatment plant construction and operation; Phase 2 was conducted by the Settling Parties and consisted of building demolition; Phase 3 was conducted jointly by the Settling Parties and EPA and consisted of the construction of a cap and cover over consolidated contaminated soil and sediments (Phase 3A—Settling Party-lead) and Meadow Brook Restoration (Phase 3B—EPA lead).

For EPA-lead activities, such as the GWTP, the design criteria were set forth in the final "Plans and Specifications for the Groundwater Remediation at the Norwood PCB Superfund Site" prepared by Metcalf & Eddy, Inc. on behalf of EPA in 1994. Meadow Brook Restoration Phase (Phase 3b) was completed in accordance with a UASCE Statement of Work (SOW), which included design details provided by the Town of Norwood as part of its flood control/flood mitigation project. Design criteria for the Settling Party-lead cleanup work (to address risks associated with the former Grant Gear facility and its operations) were set forth in the Statement of Work (SOW) which was part of a 1996 Consent Decree with former owners and operators of the Facility (hereafter referred to as the "Facility CD") as well as the Remedial Action Work Plans submitted by the Settling Parties and approved by EPA consistent with the SOW.

Sediment

The Settling Parties performed excavation of sediments in Meadow Brook from April 1997 through July 1998. The Meadow Brook remediation was divided into three sections referred to as Reach 1, 2, and 3. The excavation of Reach 1 was completed with excavation limits determined by the Town of Norwood as this section of the Brook was also targeted for sediment removal as part of the Town's flood control/flood mitigation project. Following the excavation of Reach 1 to grades provided by the Town, an area of stained soils was evident at/below a former drainage outfall pipe. Based on the analytical results showing PCBs greater than 1 ppm, a limited removal of the stained sediment was performed. In total, approximately 2,500 yd^3 of material was excavated from Reach 1including 85 yd^3 of stained soil.

The excavation of Reaches 2 and 3 was performed in two phases—the first consisted of sediment removal from the arched culvert section at Dean Street, and the second consisted of sediment removal from the box culvert section. Once clean-up levels (1 ppm in sediment) were achieved, sediment removal activities were terminated. Approximately 2,300 yd^3 of material was excavated from these reaches.

Soil

Soils with PCB concentrations exceeding the appropriate clean-up levels were excavated from several on-property areas. In addition, a trichlorobenzene (TCB)-contaminated soil area was identified west of the former Grant Gear building; this was

also excavated. Approximately 5,900 yd^3 of PCB-contaminated soil was excavated from the North Cover Area and stockpiled for placement under the cap/cover. Approximately 2,600 yd^3 of PCB-contaminated soil was excavated from the South Cover Area and stockpiled for placement under the cap/cover.

With regard to off-property soils, several areas were identified with PCB concentrations exceeding the appropriate clean-up levels. During the remediation of Reach 1 of Meadow Brook, PCB-contaminated soils were identified along the North Bank Wooded Area. Approximately 100 yd^3 of soil was excavated and stockpiled for placement under the cap/cover. In addition, PCB-contaminated soils were discovered along the South Bank Wooded Area resulting in the excavation of approximately 780 yd^3 of soil.

Beginning in 1997, the stockpiled soils were further consolidated on-site. Materials with PCB concentrations exceeding the risk-based, site-specific industrial/commercial clean-up levels (of 70 ppm) were placed within the limits of the asphalt cap. Materials with PCB concentrations below clean-up level of 70 ppm, but above 40 ppm, were placed within the limits of the cover areas. During soil excavation and consolidation, on-site underground storage tanks (USTs) were also removed before the cap and cover were installed. After the PCB-contaminated materials had been placed, the areas were prepared for the installation of the cap and covers. Once the fill was placed to the appropriate grade 12 inches below the final grade in capped and covered areas, a non-woven geotextile filter fabric was laid across the areas. Subsequently, an asphalt Cap or gravel cover was installed in the appropriate areas.

Groundwater

The selected remedy for the management of groundwater migration included the collection of groundwater using an extraction system consisting shallow extraction wells and the construction of a GWTP consisting of carbon adsorption, air stripping, precipitation, and filtration. The GWTP was constructed in 1995 and deemed operational and functional in February 1997.

The groundwater treatment system was operational until it was shut down (at that time temporarily) in June of 2000. As a result of the revised groundwater classification and "low" use and value ascribed by MassDEP in 2001, groundwater cleanup goals were further modified in an 2005 ESD. Subsequently, EPA determined that no further groundwater clean-up was warranted as revised clean-up goals were being met. The GWTP was dismantled in March 2008 just prior to property redevelopment.

Institutional Controls

As required by a Prospective Purchaser Agreement (PPA) entered in 1997 between the owner and the EPA, the Owner updated and recorded (with the Norfolk County Registry of Deeds) updated ICs in the form of a Grant of Environmental Restrictions and Easement (GERE). The GERE was recorded in March 2008 and entered into Book No. 25628, Page No. 534. The GERE restricts certain activities such as day care, residential use, and groundwater withdrawal (among others) and permits other activities, such as excavation, provided certain safety procedures are followed and approvals obtained. Under the terms of a 1997 Consent Decree (hereafter referred to as the "Meadow Brook CD") the Town of Norwood also established ICs on the Meadow Brook parcel (recorded at Book No. 26407, Page No. 129).

Cleanup Goals

The cleanup goals for PBCs in soil and sediment were modified as a result the 1996 ROD Amendment (*see* table below):

Property	1989 ROD	1996 ROD–A
Grant Gear Property	10 ppm	40 ppm surface. 70 ppm subsurface.
Adjacent Commercial Property	25 ppm	40 ppm surface. 70 ppm subsurface.
Soil between Grant Gear and Meadow Brook	1 ppm	10 ppm surface. 50 ppm subsurface.
Sediment	1 ppm	1 ppm.
Residential Properties	1 ppm	No action required.

Contaminated soil and sediment were excavated and consolidated on property for placement within the cap or cover depending on the level of contamination. Post-excavation sampling was conducted and described in the remedial action Remediation Completion Report prepared by consultants on behalf of the Settling Parties.

With regard to Groundwater, as described previously, the Commonwealth of Massachusetts classified groundwater beneath and adjacent to the site as "Low" use and value. A "Low" designation indicates that it is not a future drinking water source. Accordingly, change to the original GW cleanup goals (which were based on MCLs) were documented in the 2005 ESD and are summarized below:

Contaminant	1989 ROD	2005 ESD
Trichloroethene	5 ppb	108 ppb.
Tetrachloroethene	5 ppb	37 ppb.
Vinyl Chloride	2 ppb	310 ppb.
Total 1,2-dichloroethenes	175 ppb	3660 ppb.
1,2,4-trichlorobenzene	350 ppb	34 ppb.
1,4-dichlorobenzene	5 ppb	4.6 ppb.

EPA conducted quarterly groundwater monitoring from April 1996 until October 2002 which coincided with the period of GWTP operation and shortly thereafter. Surface water samples were also periodically collected from

Meadow Brook. Several years after plant shutdown (*i.e.* in 2005), EPA completed a final comprehensive groundwater evaluation and the resulting report documented no ROD-specified contaminants in groundwater above their respective groundwater clean-up goals established in the ESD. Having confirmed that all groundwater clean-up goals were being met (approximately 5 years after GWTP shut down), it was determined by USEPA and MassDEP that the GWTP was no longer necessary.

Operation and Maintenance

As described previously, remedial activities were completed in 3 phases (the third phase consisting of both a Phase 3A and Phase 3B).

Phase 1—Groundwater Treatment Plant

Based on achieving revised groundwater clean-up goals modified in the 2005 ESD, in 2006, EPA determined that the GWTP had reached the end of its "useful life" for all uses relative to site response activities. Accordingly, EPA proceeded to remove chemical processing equipment from the GWTP and decommission extraction and monitoring wells that were not part of the long-term monitoring. In a letter dated April 5, 2007, EPA provided notice to the owner that, as per the PPA, EPA had completed its decommissioning activities. Subsequently, on May 16, 2007, EPA received notice from the owner of his intention not to reuse the GWTP building. A work plan for its dismantling was submitted and approved in September 2007. The building was removed in the Spring of 2008. No long-term O&M of the treatment plant is required. On-going evaluation of groundwater is provided by groundwater samples collected by the Settling Parties to the Facility CD as part of their on-going O&M of the Cap and Covers (see Phase 3A below).

Phase 2—Building Demolition

The building demolition phase took place immediately prior to and in connection with the relocation of soil and sediment, and the construction of the cap and covers. Accordingly there is no O&M associated with this RA.

Phase 3A—Cap and Covers

The O&M and Environmental Monitoring Plans (EMP) were approved in November 2004. Consistent with these plans, the Settling Parties to the Facility CD annually inspect the cap and covers. As a result of redevelopment, certain cover areas have been replaced with a new type of cover (referred to as "foundation cover"). In addition, certain monitoring wells selected for long-term monitoring have been re-located. Accordingly, revised O&M and EMP plans were submitted in April 2010 and subsequently approved in January 2011.

Phase 3B—Meadow Brook Restoration

At the completion of this restoration, and in light of design details provided by the Town of Norwood to insure consistency with other flood mitigation projects, an Operation Manual was provided to the Town of Norwood in 2000. The Operation Manual described recommended procedures and inspections to ensure that the completed project continues to function as designed and that the flood control infrastructure remains in place to prevent the release of any subsurface contamination.

Institutional Controls

EPA and the State will periodically (not less than annually) inspect the property to insure that usage has not deviated from those allowed by the ICs. Under the GERE recorded on the Facility property, the landowner is obligated to follow procedures to ensure that Site redevelopment does not damage components of the remedy. On the Meadow Brook property, the Town is obligated under the terms of the Meadow Brook CD to ensure that no release of subsurface contamination occurs either in its maintenance of flood control structures or its sewer easement through the area. The status and protectiveness of these IC will be summarized in successive five year reviews.

Redevelopment

In 1997, the 9-acre Grant Gear property was sold and the new owner obtained a PPA from EPA which required the owner to guarantee continued site access, dismantle the Groundwater Treatment Plant (GWTP) building (when it had reached the end of its "useful life"), as well as record updated Institutional Controls. Subsequently (early 2000s), the owner entered a 99-year ground lease with a commercial/retail developer. In 2003, the developer proposed a large (> 150,000 square feet) redevelopment; however, this would have been situated predominantly over the remedial cap and would have required excavation into contaminated soil. Based on local concerns associated with disturbing the capped area, traffic, and other local land use issues, this redevelopment was not approved by the Town.

Thus, in 2007, a different commercial/retail developer proposed modifications to the original redevelopment plan including the construction of buildings around the footprint of the capped portion of the site. This reuse would ensure that none of the highest-contaminated material would be exposed. The revised work plan for redevelopment (WPR) was approved by EPA and MassDEP in March 2008, after which the developer received the necessary Town approvals. Construction ensued in May 2008 and was substantially complete in October 2008.

As a precaution and to ensure against the accumulation of vapors from groundwater to indoor air, a passive vapor mitigation system was required and installed in each of the commercial building. As required in the WPR, post construction and prior to occupancy, sub-slab air samples were collected and analyzed and a risk assessment completed. Based on this analysis, the risks were found to be acceptable (i.e., less than 1×10^{-6}) for a future commercial worker. Moreover, based on local zoning as well as restriction recorded against the property (described further below), residential use is prohibited. In the future, as necessary and pending future monitoring results, the sub-slab ventilation systems can be made to be actively vented with the addition of blowers or vacuum pumps.

Presently, two buildings totaling 56,000 square feet of commercial/retail space are situated on the Norwood PCBs site. The cap, under which is located the highest concentrations of PCBs, serves as a central parking lot for the development. To date, the development is not occupied.

Five-Year Review

Since hazardous substances will remain on the site above levels allowing for unlimited use and unrestricted exposure, statutory five year reviews have been conducted by EPA pursuant to CERCLA Section 121 C as provided in OSWER Directive 9355.7–03B–P, *Comprehensive Five-Year Review Guidance.*

The First Five-Year Review, dated 30 December 1999, concluded that the remedy was protective and recommended that, in light of the State's reclassification of groundwater, a risk assessment be competed. Upon attaining revised risk-based clean-up levels, groundwater treatment was no longer required, but monitoring was continued to verify that revised groundwater standards would continue to be met.

The Second Five-Year Review, dated 29 December 2004, concluded that the remedy was short-term protective of human health and the environment based on continued compliance with

new clean-up goals. In addition, O&M plans were submitted for both the Facility and Meadow Brook properties. The 2004 review also concluded that in order for the remedy to remain protective in the long-term, the following actions needed to be taken: 1. updated institutional controls needed to be recorded, and 2. Operation and Maintenance (including monitoring) needed to be conducted regularly [both of which have since occurred].

The Third Five-Year Review, completed in December 2009, concluded that the remedy at the Norwood PCBs Site continues to protect human health and the environment through meeting groundwater clean-up goals, the establishment of institutional controls, and the maintenance of remedy infrastructure concurrently during redevelopment of the Site. The 2009 Five Year Review also concluded that in order for the remedy to remain protective, the Operation & Maintenance (O&M) Plan and Environmental Monitoring Plan (EMP) must be updated to reflect changes in site conditions as a result of the redevelopment. These have been updated and approved (January 2011).

The Fourth Five-Year Review is due in December 2014.

Community Involvement

EPA community participation at the site has taken many forms. In addition to statutorily-required meetings and public hearings associated with the 1989 ROD and 1996 ROD Amendment, EPA has participated in numerous other outreach activities. EPA conducted public outreach during each of the three five-year reviews. EPA prepared updated Fact Sheets in 2003, 2005, and 2007. The Fact Sheets were distributed to mailing list recipients as well as hand-distributed to all abutting residences and business owners. Extra copies of the fact sheets have been made available to the public at the following locations: the Norwood Public library and Norwood Town Hall.

In addition, EPA has attended numerous Public Meetings during the site redevelopment approval process. All Community Involvement activities required and in association with this proposed deletion have been completed, including the publication of a notice in a local newspaper of general circulation regarding this proposed deletion and the availability of documents located in the Deletion Docket.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP specifies that EPA may delete a site from the NPL if "all appropriate responsible parties or other persons have implemented all appropriate response actions required" or "all appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate". EPA, with the concurrence of the Commonwealth of Massachusetts through the MassDEP by a letter dated [Date], believes these criteria for deletion have been satisfied. Therefore, EPA is proposing the deletion of the site from the NPL. All of the completion requirements for the site have been met as described in the Norwood PCBs Final Close Out Report (FCOR) dated September 2009.

V. Deletion Action

The EPA, with concurrence of the Commonwealth of Massachusetts through the MassDEP has determined that all appropriate response actions under CERCLA, other than operation and maintenance, routine monitoring, and five year reviews, have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective May 31, 2011 unless EPA receives adverse comments by May 2, 2011. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

Dated: March 17, 2011.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300 [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing "Norwood PCBs", "Norwood, MA".

[FR Doc. 2011–7775 Filed 3–31–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

Federal Acquisition Regulation; Government Property Disposal; Forms

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapter 1 (Parts 52 to 99), revised as of October 1, 2010, on page 527, in § 53.301–1423, the second Inventory Verification Survey form and the source note following it are removed.

[FR Doc. 2011–7810 Filed 3–31–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 1 to 99, revised as of October 1, 2010, on page 571, in § 40.97, add paragraphs (a)(2)(i) and (ii) to read as follows; and on page 572, in the same section, redesignate paragraphs (d)(1), (2) and (3) as (e)(1), (2) and (3).

§ 40.97 What do laboratories report and how do they report it?

(a) * * *

(2) * * *

(i) Positive, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug metabolite(s).

(ii) Positive-dilute, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug

metabolite(s) and with numerical values for creatinine and specific gravity;

* * * * *

[FR Doc. 2011–7828 Filed 3–31–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA–2009–0007, Notice No. 2]

RIN 2130–AC01

Track Safety Standards; Concrete Crossties

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

ACTION: Final rule.

SUMMARY: FRA is amending the Federal Track Safety Standards to promote the safety of railroad operations over track constructed with concrete crossties. In particular, FRA is mandating specific requirements for effective concrete crossties, for rail fastening systems connected to concrete crossties, and for automated inspections of track constructed with concrete crossties.

DATES: This final rule is effective on July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Kenneth Rusk, Staff Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6236); or Sarah Grimmer Yurasko, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20950 (telephone: (202) 493–6390).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Concrete Crossties Overview
- A. Derailment in 2005 near Home Valley, Washington
- B. General Factual Background on Concrete Crossties
- C. Statutory Mandate for this Rulemaking

II. Overview of FRA's Railroad Safety Advisory Committee (RSAC)

III. RSAC Track Safety Standards Working Group

IV. FRA's Approach to Concrete Crossties
- A. Rail Cant
- B. Automated Inspections

V. Response to Public Comment

VI. Section-by-Section Analysis

VII. Regulatory Impact and Notices
- A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures
- B. Regulatory Flexibility Act and Executive Order 13272
- C. Paperwork Reduction Act
- D. Environmental Impact
- E. Federalism Implications
- F. Unfunded Mandates Reform Act of 1995
- G. Energy Impact
- H. Privacy Act Statement

I. Concrete Crossties Overview

A. Derailment in 2005 Near Home Valley, Washington

On April 3, 2005, a National Railroad Passenger Corporation (Amtrak) passenger train traveling at 60 miles per hour on the BNSF Railway Company's (BNSF) line through the Columbia River Gorge (near Home Valley, Washington) derailed on a 3-degree curve. According to the National Transportation Safety Board (NTSB), 30 people sustained injuries. Property damage totaled about $854,000. *See* NTSB/RAB–06–03. According to the NTSB, the accident was caused in part by excessive concrete crosstie abrasion, which allowed the outer rail to rotate outward and create a wide gage track condition. This accident illustrated the potential for track failure with subsequent derailment under conditions that might not be readily evident in a normal visual track inspection. Conditions giving rise to this risk may include concrete tie rail seat abrasion, track curvature, and operation of trains through curves at speeds leading to unbalance (which is more typical of passenger operations). Subsequently, this accident also called attention to the need for clearer and more appropriate requirements for concrete ties, in general. This final rule addresses this complex set of issues as further described below.

B. General Factual Background on Concrete Crossties

Traditionally, crossties have been made of wood, but due to improved continuous welded rail processes, elastic fastener technology, and concrete prestressing techniques, the use of concrete crossties is widespread and growing. On major railroads in the United States, concrete crossties make up an estimated 20 percent of all installed crossties. A major advantage of concrete crossties is that they transmit imposed wheel loads better than traditional wood crossties, although they are susceptible to stress from high-impact loads. Another advantage of concrete crossties over wood ties is that temperature change has little effect on concrete's durability, and concrete ties often provide better resistance from track buckling.

There are, however, situations that can negatively impact a concrete crosstie's effectiveness. For example, in wet climates, eccentric wheel loads and non-compliant track geometry can cause high-concentrated non-uniform dynamic loading, usually toward the field-side of the concrete rail base. This highly-concentrated non-uniform dynamic loading puts stress on the crosstie that can lead to the development of a failure. Additionally, repeated wheel loading rapidly accelerates rail seat deterioration where the padding material fails and the rail steel is in direct contact with the concrete. The use of automated technology can help inspectors ensure rail safety on track constructed of concrete crossties. While wood and concrete crossties differ structurally, they both must still support the track in compliance with the Federal Track Safety Standards (49 CFR part 213).

The use of concrete crossties in the railroad industry, either experimentally or under revenue service, dates back to 1893. The first railroad to use concrete crossties was the Philadelphia and Reading Company in Germantown, PA.[1] In 1961, the Association of American Railroads (AAR)[2] carried out comprehensive laboratory and field tests on prestressed concrete crosstie performance. Replacing timber crossties with concrete crossties on a one-to-one basis at 19½-inch spacing proved acceptable based on engineering performance, but was uneconomical.

Increasing crosstie spacing from the conventional 20 inches to 30 inches increased the rail bending stress and the load that each crosstie transmitted to the ballast; however, the increased rail bending stress was within design limits. Further, by increasing the crosstie base to 12 inches, the pressure transmitted from crosstie to ballast section was the same as for timber crossties. Thus, by increasing the spacing of the crossties while maintaining rail, crosstie, and ballast stress at acceptable levels, the initial research showed that fewer concrete crossties than timber crossties could be used, making the application of concrete crossties a possible economical alternative to timber crossties.

Early research efforts in the 1960s and 1970s were focused on the strength characteristics of concrete crossties, *i.e.,* bending at the top center and at the bottom of the crosstie under the rail seat or the rail-crosstie interface, and material optimization such as aggregate and prestressing tendons and concrete

[1] J.W. Weber, "Concrete crossties in the United States," International Journal Prestressed Concrete, Vol. 14 No. 1, February 1969.

[2] "Prestressed concrete crosstie investigation," AAR, Engineering research division, Report No. ER–20 November 1961; and G.M. Magee and E. J. Ruble, "Service Test on Prestressed Concrete Crossties," Railway Track and Structures, September 1960.

failure at the rail-crosstie and ballast-crosstie interface. Renewed efforts regarding the use of concrete crossties in the United States in the 1970s were led by a major research effort to optimize crosstie design at the Portland Cement Association Laboratories (PCA).

The PCA's research included the use of various shapes, sizes, and materials to develop the most economically desirable concrete crosstie possible. Extensive use of concrete crossties by railroads all over the world since the 1970s indicates that concrete crossties are an acceptable design alternative for use in modern track. Test sections on various railroads were set up in the 1970s to evaluate the performance of concrete crossties. Such installations were on the Alaska Railroad, Chessie System, The Atchison, Topeka and Santa Fe Railway Company, the Norfolk and Western Railway Company, and the Facility for Accelerated Service Testing (FAST) in Pueblo, Colorado.[3]

During the 1970s, PCA addressed several of the initial concrete design problems, including quality control issues and abrasion. Abrasion, or failure of the concrete surface between the rail and crossties, became apparent when large sections of track were converted to concrete crossties, especially on high-curvature and high-tonnage territories. This phenomenon, commonly termed "rail seat abrasion," was noted in one form or another on four major railroads in North America (or their predecessors): Canadian Pacific Railway (CP); Canadian National Railway (CN); BNSF; and Union Pacific Railroad Company (UP).[4] CN's concrete crosstie program started in 1976, and researchers noted that rail seat abrasion was generally less than 0.2 inches by 1991. In a few cases, particularly on curved track, rail seat abrasion of as much as 1 inch has been noted. In the majority of cases, especially on tangent or light curvature track, rail seat abrasion was uniform across the rail seat. BNSF started its program in 1986 and noted the same pattern of abrasion as CN with most of the abrasion occurring on curves. At CP, rail seat abrasion was present on 5-degree curves, and CP used a bonded pad to reduce rail seat abrasion. CP's experience indicated that evidence of abrasion appeared shortly after failure of the bonded pad. At other locations where test sites were set up under less severe environments, concrete crossties were installed with no apparent sign of rail seat abrasion.

Mechanisms that lead to rail seat abrasion include the development of an abrasive slurry between the rail pad and the concrete crosstie. Slurry is made up of various materials including dust particles, fine material from the breakdown of the ballast particles, grinding debris from rail grinders, and sand from locomotive sanding or blown by the wind in desert areas of the southwest. This slurry, driven by the rail movement, abrades the concrete surface and leaves the concrete aggregate exposed, generating concentrated forces on the rail pads. This abrasion process is accelerated once the pad is substantially degraded and the rail base makes direct contact with the concrete crosstie.

Recently, a new form of rail seat abrasion, which is believed to be attributable to excessive compression forces on the rail seat area, was noted on high-curvature territory. The wear patterns in these locations have a triangular shape when viewed from the side of the crosstie. These wear patterns are similar in shape to the rail seat pressure distribution calculated when a vertical load and overturning moment are applied. The high vertical and lateral forces applied to the high rail by a curving vehicle provide such a vertical load and an overturning moment that loads the rail base unevenly.

Anecdotal evidence indicates that once this triangular shape wear pattern develops and moves beyond the two-thirds point of the rail seat, as referenced from the field side, a high negative cant is created, leading to high compressive forces on the field side. These forces are high even in the absence of an overturning moment since the rail is now bearing on only a fraction of the original bearing area. Further, it is believed that once the rail seat wears to this triangular shape, the degradation rate is accelerated due to the high compressive forces.

It is apparent that at this time, elimination of rail seat abrasion in existing concrete crossties would be difficult in areas with severe operating conditions. Thus, mitigation of the problem on new or existing crossties is required. For new crosstie construction, it is possible to focus research efforts on strengthening the rail seat area with use of high-strength concrete or with embedding a steel plate at the time new crossties are cast. Both options have a high probability of success, but could render concrete crossties uneconomical.

Modern concrete crossties are designed to accept the stresses imposed by irregular rail head geometry and loss, excessive wheel loading caused by wheel irregularities (out of round), excessive unbalance speed, and track geometry defects. In developing the regulatory text, FRA considered the worst combinations of conditions, which can cause excessive impact and eccentric loading stresses that would increase failure rates. FRA also considered other measures in the requirements concerning loss of toeload and longitudinal and lateral restraint, in addition to improper rail cant.

C. Statutory Mandate To Conduct This Rulemaking

On October 16, 2008, the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Division A) (RSIA) was enacted. Section 403(d) of RSIA states that "[n]ot later than 18 months after the date of enactment of this Act, the Secretary shall promulgate regulations for concrete cross ties. In developing the regulations for class 1 through 5 track, the Secretary may address, as appropriate—(1) Limits for rail seat abrasion; (2) concrete cross tie pad wear limits; (3) missing or broken rail fasteners; (4) loss of appropriate toeload pressure; (5) improper fastener configurations; and (6) excessive lateral rail movement." The Secretary delegated his responsibilities under RSIA to the Administrator of FRA. See 49 CFR 1.49(oo). On August 26, 2010, FRA issued a Notice of Proposed Rulemaking (NPRM) as a first step to the agency's promulgation of concrete crosstie regulations per the mandate of the RSIA. *See* 75 FR 52490. This final rule is the culmination of FRA's efforts to develop and promulgate concrete crosstie standards. In the Section-by-Section Analysis, below, FRA will discuss how the regulatory text addresses each portion of the RSIA mandate.

Regulations governing the use of concrete crossties previously addressed only high-speed rail operations (Class 6 track and above).[5] For track Classes 1–5 (the lower speed classes of track), concrete crossties had been treated, from the regulatory aspect, as timber crossties. While this approach works well for the major concerns with concrete crossties, it does not address the critical issue of rail seat abrasion. Existing regulations also do not address the longitudinal rail restraint provided by concrete crossties, which is different than the restraint provided by timber crossties. This final rule addresses these shortcomings and establishes new methodologies for inspection.

[3] T.Y. Lin, "*Design of Prestressed Concrete Structures*," Third Edition, John Wiley & Sons.

[4] Albert J. Reinschmidt, "Rail-seat abrasion: Causes and the search for the cure," Railway Track and Structures, July 1991.

[5] See 49 CFR 213.335(d).

II. Overview of FRA's Railroad Safety Advisory Committee (RSAC)

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to the Administrator of FRA on rulemakings and other safety program issues. RSAC includes representation from all of FRA's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. An alphabetical list of RSAC members includes the following:

AAR;
American Association of Private Railroad Car Owners;
American Association of State Highway and Transportation Officials;
American Chemistry Council;
American Petrochemical Institute;
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Amtrak;
Association of Railway Museums;
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employes Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
Chlorine Institute;
Federal Transit Administration;*
Fertilizer Institute;
High Speed Ground Transportation Association;
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers;
Labor Council for Latin American Advancement;*
League of Railway Industry Women;*
National Association of Railroad Passengers;
National Association of Railway Business Women;*
National Conference of Firemen & Oilers;
National Railroad Construction and Maintenance Association;
NTSB;*
Railway Supply Institute;
Safe Travel America;
Secretaria de Comunicaciones y Transporte;*
Sheet Metal Workers International Association;
Tourist Railway Association Inc.;
Transport Canada;*
Transport Workers Union of America;
Transportation Communications International Union/BRC;
Transportation Security Administration; and
United Transportation Union (UTU).

**Indicates associate, non-voting membership.*

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration.

If a working group comes to a unanimous consensus on recommendations for action, the proposal is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA will proceed to resolve the issue through traditional rulemaking proceedings.

III. RSAC Track Safety Standards Working Group

The Track Safety Standards Working Group (Working Group) was formed on February 22, 2006. On October 27, 2007, the Working Group formed two subcommittees: the Rail Integrity Task Force and the Concrete Crosstie Task Force (CCTF). Principally in response to NTSB recommendation R–06–19,[6] the Working Group directed the CCTF to consider improvements in the Track Safety Standards related to fastening of rail to concrete crossties. The Working Group specified that the CCTF do the following: (1) Provide background information regarding the amount and use of concrete crossties in the U.S. rail network; (2) review minimum safety requirements in the Federal Track Safety Standards for crossties at 49 CFR 213.109 and 213.335, as well as relevant American Railway Engineering and Maintenance-of-Way Association (AREMA) concrete construction specifications; (3) understand the science (mechanical and compressive forces) of rail seat failure on concrete ties; (4) develop a performance specification for all types of crosstie material for FRA Class 2 through 5 main line track; (5) develop specifications for missing or broken concrete fastener and crosstie track structure components and/or establish wear limits for rail seat deterioration and rail fastener integrity; and (6) develop manual and automated methods to detect rail seat failure on concrete ties.

The CCTF met on November 26–27, 2007; February 13–14, 2008; April 16–17, 2008; July 9–10, 2008; and November 19–20, 2008. The CCTF's findings were reported to the Working Group on November 19, 2008. The Working Group reached a consensus on the majority of the CCTF's work and forwarded a proposal to RSAC on December 10, 2008. RSAC voted to approve the Working Group's recommended text, which provided the basis of the NPRM.

In addition to FRA staff, the members of the Working Group include the following:

AAR, including members from BNSF, CN, CP, CSX Transportation, Inc., The Kansas City Southern Railway Company, Norfolk Southern Railway Company, and UP;
Amtrak;
APTA, including members from Port Authority Trans-Hudson Corporation, LTK Engineering Services, Northeast Illinois Regional Commuter Railroad Corporation (Metra), and Peninsula Corridor Joint Powers Board (Caltrain);
ASLRRA (representing short line and regional railroads);
BLET;
BMWED;

[6] NTSB recommended that FRA "[e]xtend[,] to all classes of track[,] safety standards for concrete crossties that address at a minimum the following: limits for rail seat abrasion, concrete crosstie pad wear limits, missing or broken rail fasteners, loss of appropriate toeload pressure, improper fastener configurations, and excessive lateral rail movement." NTSB Safety Recommendation R–06–19, dated October 25, 2006.

BRS;
Transportation Technology Center, Inc.; and
UTU.

Staff from the Department of Transportation's John A. Volpe National Transportation Systems Center attended all of the meetings and contributed to the technical discussions. In addition, NTSB staff attended all of the meetings and contributed to the discussions as well.

As FRA received only three public comments on the NPRM, the agency decided not to seek the assistance of the Working Group to respond to the comments and formulate this final rule. Due to the lack of major changes in response to public comment, this final rule is also based upon the Working Group's recommended text provided at the NPRM stage of this proceeding. FRA has greatly benefited from the open, informed exchange of information during the meetings. There is a general consensus among railroads, rail labor organizations, State safety managers, and FRA concerning the primary principles that FRA sets forth in this final rule. FRA believes that the expertise possessed by the RSAC representatives enhances the value of the recommendations, and FRA has made every effort to incorporate them in this final rule.

The Working Group was unable to reach consensus on one item that FRA has addressed in the final rule. The Working Group could not reach consensus on a single technology or methodology to measure the rail seat deterioration on concrete ties. Also, the group debated over whether or not the revised standards should contain language to accommodate the present technology. FRA will address its response to public comment on this particular issue in the Response to Public Comment section, below.

IV. FRA's Approach to Concrete Crossties

In this final rule, FRA is establishing standards for the maintenance of concrete crossties in track Classes 1 through 5. Specifically, FRA is establishing limits for rail seat abrasion, concrete crosstie pad wear limits, missing or broken rail fasteners, loss of appropriate toeload pressure, improper fastener configuration, and excessive lateral rail movement. FRA is also adding a section requiring the automated inspection of track constructed with concrete crossties.

In developing this final rule, FRA relied heavily upon the work of the CCTF conducted during the development of the NPRM in this proceeding. The Working Group tasked the CCTF to consider available scientific and empirical data or direct new studies to evaluate the concrete crosstie rail seat deterioration phenomenon and, through consensus, propose best practices, inspection criteria, or standards to assure concrete crosstie safety. The members of the CCTF worked together to develop definitions and terminology as required and to disseminate pertinent information and safety concerns.

The Federal Track Safety Standards prescribe minimum track geometry and structure requirements for specific railroad track conditions existing in isolation. Railroads are expected to maintain higher safety standards, and are not precluded from prescribing additional or more stringent requirements.

Previously, crossties were evaluated individually by the definitional and functional criteria set forth in the regulations. As promulgated in 49 CFR 213.109, crosstie "effectiveness" is naturally subjective, short of failure of the ties, and requires good judgment in the application and interpretation of the standard. The soundness of a crosstie is demonstrated when a 39-foot track segment maintains safe track geometry and structurally supports the imposed wheel loads with minimal deviation. Key to the track segment lateral, longitudinal, and vertical support is a strong track modulus, which is a measure of the vertical stiffness of the rail foundation, sustained by a superior superstructure (including rails, crossties, fasteners, etc.) and high-quality ballast characteristics that transmit both dynamic and thermal loads to the subgrade. Proper drainage is an apparent and crucial factor in providing structural support.

A. Rail Cant

The Working Group discussed the concept of rail cant, but determined not to regulate this track geometric condition. The rail cant angle is described by AREMA as a degree of slope, or cant, designed toward the centerline of the crosstie. FRA does not specifically use the term "rail cant" in any of its track regulations, including the standards in subpart G of part 213, which apply to track used for the operation of trains at greater than 90 miles per hour (mph) for passenger equipment and at greater than 80 mph for freight equipment (track Classes 6 and higher). However, "rail cant" is widely accepted and understood in the rail industry, and accordingly FRA has decided to discuss this concept in the preamble to this final rule. "Rail cant deviation" refers to the inward or outward angle made by the rail from design cant.

Automated technology that measures rail cant deviations exceeding proper design criteria is extremely efficient in identifying problems with the rail/crosstie interface such as rail seat abrasion or deterioration, ineffective fasteners, crosstie plate cutting (wood), missing or worn crosstie pads, and rail/plate misalignment. The deterioration or abrasion is the result of a compressive load and/or mechanical effects of deterioration from repetitious concentrated wheel loading, which typically develops a triangular void on the field side of the rail and allows the rail to tilt or roll outward under load, increasing gage widening and possible rail rollover relationships.

The CCTF could not reach consensus on a single technology or methodology to measure the rail cant angle when the concrete crosstie rail seat deteriorates. Also, the CCTF could not reach consensus on whether the revised standards should contain language to accommodate the present technology. Therefore, the CCTF recommended that FRA and the industry continue evaluating the possibility of developing rail seat deterioration standards for concrete crossties for broader application within the industry.

An improper rail cant angle may be an indication of rail seat deterioration, which can be detected by a variety of methods. One method currently used is a rail profile measurement system to measure rail cant angle. Other, perhaps less costly, methods have not been fully developed. CCTF members chose not to be confined to one measurement system technology when others were available to select from in the marketplace.

In the NPRM, FRA proposed that the automated inspection measurement system must be capable of measuring and processing rail cant requirements that specify the following: (1) An accuracy angle, in degrees, to within ½ of a degree; (2) a distance-based sampling interval not exceeding two feet; and (3) calibration procedures and parameters assigned to the system, which assure that measured and recorded values accurately represent rail cant. FRA did not propose to mandate the use of a particular technology, rather FRA proposed that the technology selected by the track owner be capable of measuring and processing the rail cant requirements specified in 49 CFR 213.234(e). In this final rule, in response to public comment, FRA has required the track owner to use automated technology to measure rail seat deterioration. FRA's rationale is discussed further in the Response to

Public Comment Section and Section-by-Section Analysis, below.

B. Automated Inspections

Current inspections of crossties and fasteners rely heavily on visual inspections by track inspectors, whose knowledge is based on varying degrees of experience and training. The subjective nature of those inspections can sometimes create inconsistent determinations regarding the ability of individual crossties and fasteners to support and restrain track geometry. Concrete crossties may not always exhibit strong indications of rail seat deterioration. Rail seat deterioration is often difficult to identify even while conducting a walking visual inspection. Combined with excessive wheel loading and combinations of compliant but irregular geometry,[7] a group of concrete crossties remaining in track for an extended period of time may cause rail seat deterioration to develop rapidly. When a train applies an abnormally high lateral load to a section of track that exhibits rail seat deterioration, the result can be a wide gage or rail rollover derailment with the inherent risk of injury to railroad personnel and passengers, and damage to property.

V. Response to Public Comment

FRA received comments to the NPRM from: (1) Amtrak; (2) AAR; and (3) ATDA, BLET, BMWED, BRS, and the UTU (labor). The comments pertained to both the requirements for concrete crossties as well as the requirements for the automated inspections of track. One of the comments also asked for FRA's perspective on the possibility of a track owner combining crossties constructed of wood and concrete in the same section of track. The major points of the comments are addressed below, and individual points made are covered in more depth in the Section-by-Section Analysis.

Concrete Crosstie Requirements

Both Amtrak and AAR argued against FRA's proposal in § 213.109(d) that concrete ties cannot be "deteriorated to the point that prestressing material is visible." The commenters argued that the language failed to distinguish between cases where the prestressing material has truly been compromised and cases where a small section of the outer prestressing material is exposed due to small nicks or maintenance work. Instead, the commenters suggested that FRA adopt the requirement that a concrete crosstie cannot be "completely broken through." FRA elects not to accept this comment, as the distinction between the pre-existing regulatory language of "broken through" for wood ties in § 213.109(c) and "completely broken through" for concrete ties in § 213.109(d) would be unnecessarily confusing. Also, FRA maintains that there are situations where concrete ties that are not completely broken through have, nonetheless, become ineffective. Additionally, there is a distinction between a concrete tie being simply chipped due to wheel impact as opposed to actual deterioration. Moreover, FRA clarifies that this regulation is not concerned with reinforcing material that may be left visible on the end of a tie during the manufacturing process. FRA's rationale is described further in the Section-by-Section Analysis, below.

AAR also commented on the proposed requirement in § 213.109(d)(4), which provides that the deterioration or abrasion under the rail seat cannot be ½ of an inch or more in order for the crosstie to be counted in satisfying the mandate for a minimum number of crossties, as set forth in § 213.109(b)(4). AAR points out that FRA stated in the NPRM preamble that the measurement of ½ of an inch includes depth from the loss of rail pad material. AAR argues that the rail pad material is not part of the concrete crosstie and that the loss of the rail pad material should not be included in the ½ of an inch calculation. FRA maintains that, when a concrete tie is constructed with a rail pad, loss of the rail pad material must be included in the ½ of an inch calculation. FRA addresses this point further in the Section-by-Section Analysis, below.

Additionally, AAR asserts that FRA's proposed requirement in § 213.109(d)(6) that concrete crossties cannot be configured with less than two fasteners on the same rail is overly stringent for Class 1 and 2 track. AAR argues that, if the fastenings on two adjacent ties on Class 1 or 2 track, neither of which fully comply with § 213.109(d)(5), provide the equivalent of the fastenings on one tie, the two adjacent ties should be counted as one tie for the purposes of § 213.109(a)(4). AAR provides that this flexibility could be useful in the case of a derailment where one axle derails. For example, this type of derailment can result in a large number of concrete ties where the inner clip on one rail can no longer function, but the other three clips are fine. AAR proposes that these ties can be safely reused in Class 1 and 2 tracks by turning every second tie end for end. FRA responds that, as with non-concrete ties, one of the safety requirements of an effective concrete tie is that it be able to hold fasteners. Consequently, FRA is declining to accept AAR's recommended change to the regulatory text due to this safety concern.

Automated Inspections

All three commenters provided their thoughts and concerns regarding automated inspections. The broadest concern that the comments seemed to share pertained to FRA's proposal that track owners use rail cant measurements in § 213.234(d) to obtain the depth of rail seat deterioration. AAR suggested that some automated systems might use the angle of rail cant to obtain the depth of deterioration, but that method should not be mandated by regulation. Labor also commented that any automated technology that can be proven to accurately detect and measure rail seat abrasion within the tolerances established by FRA should be allowed.

In response to these concerns, FRA accepts the commenters' suggestion that the regulation require that an automated system measure rail seat deterioration instead of rail cant. FRA has determined to hold the track owner to a performance-based standard of having an automated system that accurately measures rail seat deterioration without mandating which technology should be used. This point is discussed further in the Section-by-Section Analysis related to § 213.234(d).

Concrete and Other Than Concrete Crossties

Labor commented that the proposed regulations would not prohibit a track owner from using a mixture of crossties constructed of both wood and concrete in the same 39-foot segment of track. The comment requested FRA's opinion on this practice. FRA declines to mandate the type of material that must be used in track. The final rule provides that, based upon the class of track, a 39-foot segment of track must have a certain number of non-defective crossties. The rule goes on to define what constitutes a non-defective crosstie for both concrete crossties and non-concrete crossties. In using the term "crossties, other than concrete" in the rule, FRA has allowed for future advances in technology that could allow for crossties to be constructed out of alternative materials. FRA has mandated that there be a specified number of non-defective crossties in a 39-foot segment

[7] By "compliant but irregular geometry," FRA notes that track geometry can become irregular when multiple geometry measurements (gage, profile, or alinement) near the compliance limits. This combination of geometry conditions can cause irregular geometry that, when coupled with excessive wheel loading, can cause the rapid development of rail seat deterioration.

of track, but has left the type of material that compose the crossties in that segment to the track owner's discretion.

VI. Section-by-Section Analysis

Section 213.2 Preemptive Effect

FRA is removing this section from 49 CFR part 213. This section was prescribed in 1998 and has become outdated and, therefore, misleading because it does not reflect post-1998 amendments to 49 U.S.C. 20106. 63 FR 34029, June 22, 1998; Sec. 1710(c), Public Law 107–296, 116 Stat. 2319; Sec. 1528, Public Law 110–53, 121 Stat. 453. Although FRA considered updating this regulatory section, FRA now believes that the section is unnecessary because 49 U.S.C. 20106 sufficiently addresses the preemptive effect of part 213. In other words, providing a separate Federal regulatory provision concerning the regulation's preemptive effect is duplicative of 49 U.S.C. 20106 and, therefore, unnecessary.

Section 213.109 Crossties

FRA is amending this section to reflect recommendations made by the CCTF and adopted by RSAC. After discussion and review of concrete crosstie requirements in the higher speed subpart (subpart G of the Track Safety Standards), the CCTF concluded that performance specifications for concrete crossties are needed in the lower-speed standards. Specifically, requirements are needed to establish limits for rail seat abrasion, concrete crosstie pad wear limits, missing or broken rail fasteners, loss of appropriate toeload pressure, improper fastener configuration, and excessive lateral rail movement. The CCTF reviewed the method and manner of manual and automated inspection methods and technology to abate track-caused reportable derailments. FRA is revising this section to clarify the type of crosstie that will fulfill the requirements of paragraph (b) and to include requirements specific to concrete crossties.

Paragraph (b). In this paragraph, FRA is clarifying that only non-defective crossties may be counted to fulfill the requirements of the paragraph. Non-defective crossties are defined in paragraphs (c) and (d). FRA is also making other minor grammatical corrections to this paragraph, including moving the table of minimum number of crossties from paragraph (d) to paragraph (b)(4).

Paragraph (c). FRA makes clear that this paragraph is specific to crossties other than concrete crossties.

Paragraph (d). FRA is moving the existing table of minimum number of crossties from this paragraph, to paragraph (b)(4). FRA is substituting language that delineates the requirements related to concrete crossties.

Paragraph (d)(1). In this paragraph, FRA states that, as with non-concrete crossties, concrete crossties counted to fulfill the requirements of paragraph (b)(4) must not be broken through or deteriorated to the extent that prestressing material is visible. Crossties must not be so deteriorated that the prestressing material has visibly separated from, or visibly lost bond with, the concrete, resulting either in the crosstie's partial break-up, or in cracks that expose prestressing material due to spalls or chips, or in significant broken-out areas exposing prestressed material. Currently, metal reinforcing bars are used as the prestressing material in concrete crossties. FRA is using the term "prestressing material" in lieu of "metal reinforcing bars" to allow for future technological advances.

As stated in the Response to Public Comment section of the preamble, FRA has elected to require that a concrete crosstie must not be "broken through" or "deteriorated to the extent that prestressing material is visible." Crosstie failure is exhibited in three distinct ways: Stress induced (breaks, cracks); mechanical (abrasion); or chemical decomposition. FRA continues to believe that breaks, cracking, mechanical abrasion, or chemical reaction in small or large degrees compromise the crosstie's ability to maintain the rails in proper gage, alignment, and track surface.

FRA notes that there is a distinction between the phrases "broken through" and "deteriorated to the extent that prestressing material is visible." Concrete crossties are manufactured in two basic designs: Twin-block and mono-block. Twin-block crossties are designed with two sections of concrete connected by exposed metal rods. A mono-block crosstie is similar in dimension to a timber or wood crosstie and contains prestress metal strands embedded into the concrete. The metal reinforcing strands in the concrete are observed at the ends of the crosstie for proper tension position. Prestressed reinforced concrete, including prestressed concrete ties, is made by stressing the reinforcing material in a mold, then pouring cement concrete over the reinforcing material in the mold. After the concrete cures, the tension on the reinforcing material is released, and the ends of the reinforcing material are trimmed, if appropriate for the use. The reinforcing material remains in tension against the concrete, which is very strong in compression. This allows the prestressed concrete to withstand both compressive and tensile loads. If the concrete spalls, or if the reinforcing material is otherwise allowed to come out of contact with the concrete, then the reinforcing material is no longer in tension. When this happens, the once prestressed concrete can no longer withstand tensile loads, and it will fail very rapidly in service, such as in a concrete tie.

FRA notes that prestressing material can be exposed in a concrete crosstie in a crack, but it can also be exposed on the side of the tie. When prestressing material becomes exposed on the side of the tie, the reinforcing material is no longer in tension, the prestressed concrete can no longer withstand the tensile loads, and therefore a concrete crosstie can structurally fail. This does not apply to reinforcing material left visible at the end of the tie during the manufacturing process.

The compressive strength of the concrete material and the amount of prestress applied in the manufacturing process provide the strength and stiffness necessary to adequately support and distribute wheel loads to the subgrade. The reinforcing metal strands/wires encased in concrete hold the crosstie together and provide tensile strength. However, significant cracking or discernible deterioration exposure of the reinforcing strands to water and oxygen produces loss of the prestress force through corrosion, concrete deterioration, and poor bonding. Loss of the prestress force renders the crosstie susceptible to structural failure and as a consequence, stability failure relating to track geometry non-compliance.

During routine inspections, spalls, chips, cracks, and similar breaks are easily visible. However, the compression of prestressed concrete crossties may close cracks as they occur, making them difficult to observe. Even such closed cracks probably weaken the crossties. Breaks or cracks are divided into three general conditions: Longitudinal; center; and rail seat. Longitudinal cracks are horizontal through the crosstie and extend parallel to its length. They are initiated by high impacts on one or both sides of the rail bearing inserts. Crosstie center cracks are vertical cracks extending transversely or across the crosstie. These cracks are unusual and are the result of high negative bending movement (centerbound), originating at the crosstie top and extend to the bottom. Generally, the condition is progressive, and adjacent crossties may be affected. Rail

seat cracks are vertical cracks that are not easily visible. They usually extend from the bottom of the crosstie on one or both sides of the crosstie and are often hard to detect. It is possible for a crosstie to be broken through, but, due to the location of the break, the prestressing material may not be visible. Crosstie strength, generally, does not fail unless the crack extends through the top layer of the prestress strands. Once the crack extends beyond the top layer, there is usually a loss of strand and concrete bond strength.

Paragraph (d)(2). This paragraph makes clear that crossties counted to fulfill the requirements of paragraph (b)(4) of this section must not be deteriorated or broken off in the vicinity of the shoulder or insert so that the fastener assembly can either pull out or move laterally more than ⅜ inch relative to the crosstie. These conditions weaken rail fastener integrity.

Paragraph (d)(3). This paragraph requires that crossties counted to fulfill the requirements of paragraph (b)(4) of this section must not be deteriorated such that the base of either rail can move laterally more than ⅜ inch relative to the crosstie on curves of 2 degrees or greater; or can move laterally more than ½ inch relative to the crosstie on tangent track or curves of less than 2 degrees. FRA's intent is to allow for a combination rail movement up to the dimensions specified, but not separately. The rail and fastener assembly work as a system, capable of providing electrical insulation, and adequate resistance to lateral displacement, undesired gage widening, rail canting, rail rollover, and abrasive or excessive compressive stresses. This paragraph specifically addresses Section 403(d)(6) of the RSIA, which states that the Secretary may address excessive lateral rail movement in the concrete crosstie regulations.

Paragraph (d)(4). In this paragraph, FRA is requiring that crossties counted to fulfill the requirements of paragraph (b)(4) of this section must not be deteriorated or abraded at any point under the rail seat to a depth of ½ inch or more. The measurement of ½ inch includes depth from the loss of rail pad material. The importance of having pad material in place with sufficient hysteresis (*i.e.,* resilience (elasticity) to dampen high impact loading and recover) is paramount to control rail seat cracks caused by rail surface defects, wheel flats, or out of round wheels. Additionally, concrete crossties must be capable of providing adequate rail longitudinal restraint from excessive rail creepage or thermally induced forces or stress. As mentioned above, "rail creepage" is the tractive effort or pulling force exerted by a locomotive or car wheels, and "thermally induced forces or stress" is the longitudinal expansion and contraction of the rail, creating either compressive or tensile forces as the rail temperature increases or decreases, respectively. The loss of pad material causes a loss of toeload force, which may decrease longitudinal restraint. This paragraph specifically addresses Section 403(d)(1) of the RSIA, which states that the Secretary may address limits for rail seat abrasion in the concrete crosstie regulations.

Paragraph (d)(5). This paragraph requires that crossties counted to fulfill the requirements of paragraph (b)(4) of this section must not be deteriorated such that the crosstie's fastening or anchoring system is unable to maintain longitudinal rail restraint, maintain rail hold down, or maintain gage, due to insufficient fastener toeload. Inspectors evaluate crossties individually by "definitional and functional" criteria. A compliant crosstie is demonstrated when a 39-foot track segment maintains safe track geometry and structurally supports the imposed wheel loads. In addition to ballast, anchors bear against the sides of crossties to control longitudinal rail movement, and certain types of fasteners also act to control rail movement by exerting a downward clamping force (toeload) on the upper rail base. Part of the complexity of crosstie assessment is the fastener component. Both crossties and fasteners act as a system to deliver the expected performance effect. A non-compliant crosstie and defective fastener assembly improperly maintains the rail position and support on the crosstie and contributes to excessive lateral gage widening (rail cant-rail rollover), and longitudinal rail movement because of loss of toeload.

Fastener assemblies or anchoring systems allow a certain amount of rail movement through the crosstie to effectively relieve rail creepage (tractive and thermal force build-up). However, because of the unrestrained buildup caused by rail creep, the longitudinal expansion and contraction of the rail creates either compressive or tensile forces, respectively. When longitudinal rail movement is uncontrolled, it may disturb the track structure, causing misalignment (compression) or pull-apart (tensile) conditions to catastrophic failure. Specific longitudinal performance metrics would be undesirable and restrict certain fastener assembly designs and capabilities to control longitudinal rail movement. Therefore, track inspectors must use good judgment in determining fastener assembly and crosstie effectiveness. This paragraph specifically addresses Sections 403(d)(3) and (d)(4) of the RSIA, which state that the Secretary may address, in the concrete crosstie regulations, missing or broken rail fasteners, and loss of appropriate toeload pressure.

In its comments on the NPRM, AAR recommended that the phrase, "including rail anchors (*see* § 213.127(b))" be added directly after the word "system" in this paragraph. FRA agrees with this recommendation and has incorporated this change into the final rule text.

Paragraph (d)(6). This paragraph makes clear that crossties counted to fulfill the requirements of paragraph (b)(4) of this section must not be configured with less than two fasteners on the same rail except as provided in § 213.127(c). FRA is revising § 213.127(c), discussed further below, to include requirements specific to fasteners utilized in conjunction with concrete crossties.

In response to the NPRM, AAR commented that FRA's proposed requirement in § 213.109(d)(6) that concrete crossties cannot be configured with less than two fasteners on the same rail is overly stringent for Class 1 and 2 track. AAR argues that, if the fastenings on two adjacent ties on Class 1 or 2 track, neither of which fully comply with paragraph (d)(5) of this section, provide the equivalent of the fastenings on one tie, the two adjacent ties should be counted as one tie for the purposes of paragraph (a)(4) of this section. AAR provides that this flexibility could be useful in the case of a derailment where one axle derails. For example, this type of derailment can result in a large number of concrete ties where the inner clip on one rail can no longer function, but the other three clips are fine. AAR asserts that these ties can be safely reused in Class 1 and 2 tracks by turning every second tie end for end. FRA contends that, as with non-concrete ties, one of the safety requirements of an effective concrete tie is that it be able to hold fasteners. Thus, FRA is declining to accept this suggested change to the regulatory text due to this safety concern.

Section 213.127 Rail Fastening Systems

FRA is revising this section by designating the existing rule text as paragraph (a) and adding new paragraphs (b) and (c).

Paragraph (b). This paragraph requires that if rail anchors are applied to concrete crossties, then the combination of the crossties, fasteners, and rail

anchors must provide effective longitudinal restraint. FRA has elected not to define "effective longitudinal restraint," choosing instead to make this provision a performance-based standard.

Paragraph (c). This paragraph addresses instances where fastener placement impedes insulated joints from performing as intended by permitting the fastener to be modified or removed, provided that the crosstie supports the rail. By "supports," FRA means that the crosstie is in direct contact with the rail or leaves an incidental space between the tie and rail. Certain joint configurations do not permit conventional fasteners to fit properly. As a result, manufacturers offer a modified fastener to fit along the rail so that the fastener provides the longitudinal requirement, or it is removed completely, providing lateral restraint is accomplished by ensuring full contact with the rail.

Labor representatives commented that FRA should not allow for the removal of fasteners at insulated joints in any case where modified fasteners are offered by the manufacturer or are otherwise available from any source. In cases where removal of the fastener is the only option, such removal should be limited to insulated joints only, the crossties without fasteners must fully support the rail with no incidental space between the tie and rail, and that a minimum of three non-defective crossties on each side of the unfastened insulated joint be required. FRA believes that, without an engineering rationale to support labor's proposal, it is unnecessarily restrictive. Additionally, FRA points out that the requirement of having an effective crosstie within a prescribed distance of a joint contained in § 213.109(e) would apply, and FRA does not see a need to modify this requirement for insulated joints. Finally, FRA has elected not to mandate what type of equipment or what manufacturer a track owner must use, but instead has determined to regulate the performance of the material to the minimum safety standards promulgated in part 213.

Section 213.234 Automated Inspection of Track Constructed With Concrete Crossties

FRA is adding a new section requiring the automated inspection of track constructed with concrete crossties. Automated inspection technology is available to perform essential tasks necessary to supplement visual inspection, quantify performance-based specifications to guarantee safe car behavior, and provide objective confidence and ensure safe train operations. Automated inspections provide a level of safety superior to that of manual inspection methods by better analyzing weak points in track geometry and structural components. The computer systems in automated inspection systems can accurately detect geometry deviations from the Track Safety Standards and can analyze areas that are often hard to examine manually. Railroads benefit from automated inspection technology by having improved defect detection capabilities, suffering fewer track-related derailments, and improving overall track maintenance.

Automated inspection technology is used in Track Geometry Measurement Systems (TGMS), Gage Restraint Measurement Systems (GRMS), and Vehicle/Track Interaction (VTI) performance measurement systems. TGMS identify single or multiple non-compliant track geometry conditions. GRMS aid in locating good or poor performing track strength locations. VTI performance measurement systems encompass both acceleration and wheel forces that, when exceeding established thresholds, often cause damage to track components and rail equipment. These automated technologies may be combined in the same or different geometry car platforms or vehicles and require vehicle/track measurements to be made by truck frame accelerometers, carbody accelerometers, or by instrumented wheelsets to measure wheel/rail forces, ensuring performance limits are not exceeded. Moreover, rail seat deterioration can be very difficult and time consuming for a track inspector to detect manually. Automated inspection vehicles have proven effective in measuring rail seat deterioration, and the inspection vehicles can inspect much more rapidly and accurately than a visual track inspection.

Paragraph (a). In this paragraph, FRA is requiring that automated inspection technology be used to supplement visual inspection by Class I railroads including Amtrak, Class II railroads, other intercity passenger railroads, and commuter railroads or small governmental jurisdictions that serve populations greater than 50,000, on track constructed of concrete crossties for Class 3 main track over which regularly scheduled passenger service trains operate, and for all Class 4 and 5 main track constructed with concrete crossties. FRA is also requiring that automated inspections identify and report concrete crosstie deterioration or abrasion prohibited by § 213.109(d)(4). The purpose of the automated inspection is to measure for rail seat deterioration. As previously discussed, rail seat deterioration is the failure of the concrete surface between the rail and crossties. In § 213.109(d)(4) FRA requires that the crosstie must not be "deteriorated or abraded at any point under the rail seat to a depth of ½ inch or more." The depth includes the loss of rail pad material.

This paragraph also explicitly states, that the requirements for automated track inspections do not become applicable until January 1, 2012. The paragraph also intends to make clear that the requirements do not apply to sections of tangent track that are 600 feet or less in length that are constructed of concrete crossties, including, but not limited to, isolated track segments, experimental or test track segments, highway-rail crossings, and wayside detectors.

Paragraph (b). In this paragraph, FRA is stating the frequencies at which track constructed of concrete crossties shall be inspected by automated means. An automated inspection must be conducted twice each calendar year, with no less than 160 days between inspections, if the annual tonnage on Class 4 and 5 main track and Class 3 main track with regularly scheduled passenger service exceeds 40 million gross tons (mgt). An automated inspection must be conducted at least once each calendar year if annual tonnage on Class 4 and 5 main track and Class 3 track with regularly scheduled passenger service equals or is less than 40 mgt annually. FRA is also requiring that either an automated or walking inspection be conducted once per calendar year on Class 3, 4 and 5 main track with exclusively passenger service. Finally, this paragraph makes clear that track not inspected in accordance with paragraph (b)(1) or (b)(2) of this section because of train operation interruption must be reinspected within 45 days of the resumption of train operations by a walking or automated inspection. If this inspection is conducted as a walking inspection, FRA requires that the next scheduled inspection be an automated inspection as required by this paragraph.

In its comment, labor representatives recommended that FRA should reduce the 40 mgt threshold to 30 mgt. The comment points out that the Working Group's Rail Integrity Task Force, which operated concurrently within the same basic timeframe as the CCTF, reached consensus to reduce the threshold for automated internal rail flaw detection from 40 mgt to 30 mgt. These commenters also recommended that

FRA consider adding one additional automated inspection for track exceeding 60 mgt and one additional automated inspection for track exceeding 90 mgt, for a maximum of four automated inspections per calendar year with at least 70 days between inspections. FRA believes that without technical information supporting such a change, FRA is not persuaded to change the limits agreed upon by the Working Group. Additionally, internal rail flaw detection equipment is not the same as equipment designed to measure track geometry. A railroad is likely to use different equipment to measure rail cant and to detect internal rail flaws, so there is no particular savings in attempting to conduct both inspections on the same intervals. Further, development of internal rail flaws to failure has different characteristics from development of tie failures. There is no particular reason to establish both at the same intervals. The different RSAC recommendations reflect those differences, and FRA sees no need to adopt the more frequent intervals recommended for rail flaw detection for measurement of possible rail seat abrasion.

AAR commented that paragraph (b)(4) addresses instances where automated inspections have not taken place because of train interruption. The comment states that the NPRM failed to account for instances where inspections cannot take place because of stopped trains or because the automated equipment has failed. AAR suggested amending the text to state that it also applies whether inspections are interrupted because of a standing train or by failure of the inspection equipment. FRA asserts that the track owner is provided a year to conduct either one or two inspections. This section was intended for circumstances out of the track owner's control, such as extreme weather conditions. FRA believes the rule provides sufficient flexibility to permit a track owner to schedule the inspections to allow for foreseeable operational conditions such as a standing train or failed equipment and still be able to conduct the required one or two inspections within a calendar year.

Paragraph (c). In this paragraph, FRA excludes from the required automated inspections sections of tangent track of 600 feet or less constructed of concrete crossties, including, but not limited to, isolated track segments, experimental or test track segments, highway/rail crossings, and wayside detectors. These exclusions are specified because FRA recognizes the economic burden caused by requiring automated inspections to be made on short isolated locations constructed of concrete crossties that may be difficult to measure without removal of additional material, such as grade crossing planking.

Paragraph (d). In this final rule, FRA requires that the automated inspection measurement system must be capable of measuring and processing rail seat deterioration requirements which specify the following: (1) An accuracy, to within ⅛ of an inch; (2) a distance-based sampling interval not exceeding five feet; and (3) calibration procedures and parameters assigned to the system, which assure that measured and recorded values accurately represent rail seat deterioration.

While other automated inspection technologies may exist in the field, FRA believes that the Rail Profile Measurement System (RPMS) is currently the best developed technology to measure rail seat deterioration. RPMS determines rail seat deterioration by measuring rail cant in tenths of a degree. It is often difficult to measure rail cant in the field with hand measurement tools because of the small dimension, *e.g.,* one degree rail cant angle equates to ⅛ inch depth between the rail seat and the rail. Typically the RPMS instrumentation onboard FRA geometry cars are set to notify an advisory exception when the angle exceeds four degrees of negative or outward rail cant. This paragraph was specifically added to address Section 403(d)(1) of the RSIA, which states that, in the concrete crosstie regulations, the Secretary may address limits for rail seat abrasion.

As mentioned above, FRA received several comments relating to the NPRM's proposed requirement that track owners to use only automated systems measuring rail cant to determine rail seat abrasion was too restrictive. Additionally, both Amtrak and AAR commented that the system should be required to measure rail seat deterioration within an accuracy of ⅛ of an inch. AAR also requested that the sampling rate be changed from two to five feet, and Amtrak requested that the sampling rate be changed from two feet to ten feet.

FRA has decided to accept the commenters' suggestion to prescribe the results that an automated inspection system must be capable of producing, but to decline mandating which technology the track owner must use for the automated inspection system. FRA believes that current automated inspection systems that measure rail cant provide a reliable method of determining rail seat deterioration. However, to allow for future advances in technology, FRA will not mandate that a track owner's automated system must measure rail cant to determine rail seat deterioration. Additionally, FRA is accepting the recommendation that the distance-based sampling system should not exceed five feet as opposed to the two feet proposed in the NPRM. FRA believes that five feet in a distance-based sampling system will produce results to a sufficient accuracy level.

Paragraph (e). In this paragraph, FRA is requiring that the automated inspection measurement system produce an exception report containing a systematic listing of all exceptions to § 213.109(d)(4), identified so that appropriate persons designated as fully qualified under § 213.7 can field-verify each exception. This paragraph requires that each exception be located and field-verified no later than 48 hours after the automated inspection, and that all field-verified exceptions are subject to all the requirements of part 213.

FRA expects that the track owner would want to ensure that any exception that the automated inspection detects would be field-verified by a qualified person under § 213.7. This is not only to ensure that the exception report accurately reflects the conditions of the track, but also to ensure that a qualified person can take appropriate remedial action in a timely manner. Additionally, FRA reminds track owners that all field-verified exceptions are subject to all of the requirements contained in FRA's Track Safety Standards.

Labor representatives recommended that the exception report should also be given to the person that the track owner has designated as being responsible for frequency inspections pursuant to § 213.233. Although FRA refuses to interfere with a track owner's assignment process and is not willing to accept this comment, FRA agrees that it would be a best practice for the track owner to ensure that the person responsible for performing the frequency inspections required by § 213.233 be provided a copy of the exception report, as all field-verified exceptions are subject to all of FRA's Track Safety Standards.

Paragraph (f). This paragraph requires that the track owner maintain a record of the inspection data and the exception record for the track inspected in accordance with this section for a minimum of two years. The record must include the date and location of limits for the inspection, type and location of each exception, the results of field verification, and any remedial action if required. The location identification must be provided either by milepost or by some other objective means, such as by the location description provided by

the Global Positioning System. This new regulation is intended to require the track owner to keep a good record of the conditions of track constructed of concrete crossties and, through such records, FRA track inspectors will have a greater ability to gain access to and accurately assess the railroad's compliance history.

Paragraph (g). This paragraph requires that the track owner institute the necessary procedures for maintaining the integrity of the data collected by the measurement system. The track owner must maintain and make available to FRA documented calibration procedures of the measurement system that, at a minimum, specifies an instrument verification procedure that will ensure correlation between measurements made on the ground and those recorded by the instrumentation. Also, the track owner must maintain each instrument used for determining compliance with this section. The purpose of this paragraph is to ensure that the equipment that the track owner is using to comply with the regulations accurately detects what it is designed to detect. FRA has accepted a small comment from labor representatives removing the reference to the cant angle, as FRA has allowed for track owners to use alternative means of technology in their automated inspections.

Paragraph (h). This paragraph requires that the track owner provide annual training in handling rail seat deterioration exceptions to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of § 213.234. At a minimum, the training required by this paragraph shall address interpretation and handling of the exception reports generated by the automated inspection measurement system, locating and verifying exceptions in the field and required remedial action, and recordkeeping requirements.

FRA's objective is to ensure that all persons required to comply with the regulations are properly trained. Such persons should at least understand the basic principles of the required automated inspection process, including handling of the exception reports, field verification, and recordkeeping requirements. FRA accepted labor's comment that the training be provided annually.

VII. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this final rule. FRA has met with and made presentations to those who are likely to be affected by this rule in order to seek their views on the rule. As part of the regulatory evaluation, FRA has assessed quantitative measurements of the cost streams expected to result from the implementation of this final rule. The final rule has been determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures.

Document inspection and copying facilities are available at the Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2009–0007.

The concrete crosstie standards are intended to avoid a relatively new type of derailment where a train traveling over concrete ties causes the rail to roll to the outside of a curve, because the rail seat has worn away (abraded). The final rule clarifies what constitutes an effective concrete tie and fastening system, and also requires railroads, other than small entities, to conduct automated inspections of the concrete ties.

For those automated inspection cars with a sufficient number of sensors to measure rail cant, but that do not currently measure rail cant, the owner, either a railroad or contractor, would have to modify the software to calculate rail cant and provide alarms for rail cant in excess of limits. This is the basic cost burden associated with this final rule. FRA believes that measuring the rail cant will avoid future accidents such as the accident near Home Valley, Washington, described above, in which 30 people (22 passengers and 8 employees) sustained minor injuries; 14 of those people were taken to local hospitals. Two of the injured passengers were kept overnight for further observation; the rest were released. Track and equipment damages, in addition to clearing costs associated with the accident, totaled about $854,000.

FRA is confident that implementation of the final rule would result in safety benefits of $124,800 annually after an initial cost of $1,400,000. Over 20 years, the discounted total benefit would be $1,414,682 at a 7 percent annual discount rate and $1,912,410 at a 3 percent annual discount rate. The costs are not discounted because they are incurred in the initial year, so the discounted net benefit will be $14,682 at a 7 percent annual discount rate and $512,410 at a 3 percent annual discount rate. FRA believes the actual costs may be lower, because in the final rule, in response to AAR's comment, FRA allows the railroads to sample rail cant at intervals as long as five feet, rather than the two foot intervals proposed in the NPRM. FRA did not reduce the cost estimates, as no data was available from which to estimate this reduced cost. Safety benefits would justify the initial investment. Based on a 7 percent discount rate, the benefits are slightly higher than the costs, and there is a meaningful reduction in safety risk, which is not fully quantified because some accident costs were not quantified. The net benefits are more significant at the 3 percent discount rate.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (the Act) (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity," is 1,500 employees for "Line-Haul Operating Railroads" and 500 employees for "Switching and Terminal Establishments." 13 CFR part 121. "Small entity" is defined in the Act as a small business that is independently owned and operated, and is not dominant in its field of operation. 5 U.S.C. 601. Additionally, 5 U.S.C. 601(5) defines "small entities" as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. SBA's "Size Standards" may be altered by Federal agencies after consultation with SBA and in conjunction with public comment.

Pursuant to that authority, FRA has published a final policy that formally establishes "small entities" as Class III railroads, contractors, and shippers meeting the economic criteria established for Class III railroads in 49 CFR 1201.1–1, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. 49 CFR part 209, app. C. FRA believes that no shippers, contractors, or small governmental jurisdictions would be affected by this final rule. At present there are no commuter railroads that would be considered small entities. The revenue requirement for Class III railroads is currently nominally $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board's threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity.

Class I railroads have significant segments of concrete crossties, and own the overwhelming majority of all installed crossties. About a dozen Class II railroads that were formerly parts of Class I systems may have limited segments and some Class III railroads may have remote locations with concrete crossties, typically in turnouts and other segment locations less than 600 feet in length. Small railroads were consulted during the RSAC Working Group deliberations, and their interests have been taken into consideration in this final rule. The provisions requiring automated inspections do not apply to Class III railroads or any commuter railroads that may be considered small entities. Such entities would only be subject to new requirements for tie and fastener conditions; however, small railroads typically do not have large numbers of concrete ties, and the cost associated with meeting such requirements is not significant. Therefore, FRA is certifying that it expects there will be no significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this final 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 section that contains the new information collection requirements is noted below, and the estimated burden time to fulfill each requirement is as follows:

49 CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
213.234—Automated Inspection of Track Constructed with Concrete Crossties:				
—Exception Reports	18 Railroads	150 reports	8 hours	1,200
—Field-Verified Exception Reports	18 Railroads	150 field verifications	2 hours	300
—Records of Inspection Data and Exception Records.	18 Railroads	150 records	30 minutes	75
—Procedures for Maintaining Data Integrity Collected by Measurement System.	18 Railroads	18 procedures	4 hours	72
—Training of Employees in Handling Seat Deterioration.	18 Railroads	2,000 trained employees.	8 hours	16,000

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the information collection submission sent to OMB, please contact Mr. Robert Brogan at 202–493–6292 or Ms. Kimberly Toone at 202–493–6132 or via e-mail at the following addresses: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov.*

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503, attn: FRA Desk Officer. Comments may also be sent via e-mail to the Office of Management and Budget 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 final 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.

FRA cannot 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 this 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 final rule 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 final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule 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 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.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. If adopted, this final rule would not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. FRA has also determined that this final rule would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Moreover, FRA notes that RSAC, which endorsed and recommended the majority of this final rule, has as permanent members, two organizations representing State and local interests: AASHTO and ASRSM. Both of these State organizations concurred with the RSAC recommendation made in this rulemaking. RSAC regularly provides recommendations to the Administrator of FRA for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the federalism implications of this rulemaking from these representatives or from any other representatives of State government.

However, this final rule could have preemptive effect by operation of law under 49 U.S.C. 20106 (Section 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "local safety or security hazard" exception to Section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under Sec. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Sec. 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 $100,000,000 or more (adjusted annually for inflation) [currently $140,800,000] 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 final rule will not result in the expenditure, in the aggregate, of $140,800,000 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 final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule 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 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 213 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Pub. L. 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 213.2 [Removed]

■ 2. Remove § 213.2.

■ 3. Section 213.109 is revised to read as follows:

§ 213.109 Crossties.

(a) Crossties shall be made of a material to which rail can be securely fastened.

(b) Each 39-foot segment of track shall have at a minimum—

(1) A sufficient number of crossties that in combination provide effective support that will—

(i) Hold gage within the limits prescribed in § 213.53(b);

(ii) Maintain surface within the limits prescribed in § 213.63; and

(iii) Maintain alinement within the limits prescribed in § 213.55;

(2) The minimum number and type of crossties specified in paragraph (b)(4) of this section and described in paragraph (c) or (d), as applicable, of this section effectively distributed to support the entire segment;

(3) At least one non-defective crosstie of the type specified in paragraphs (c) and (d) of this section that is located at a joint location as specified in paragraph (e) of this section; and

(4) The minimum number of crossties as indicated in the following table.

FRA track class	Tangent track, turnouts, and curves	
	Tangent track and curved track less than or equal to 2 degrees	Turnouts and curved track greater than 2 degrees
Class 1	5	6
Class 2	8	9
Class 3	8	10
Class 4 and 5	12	14

(c) Crossties, other than concrete, counted to satisfy the requirements set forth in paragraph (b)(4) of this section shall not be—

(1) Broken through;

(2) Split or otherwise impaired to the extent the crosstie will allow the ballast to work through, or will not hold spikes or rail fasteners;

(3) So deteriorated that the crosstie plate or base of rail can move laterally ½ inch relative to the crosstie; or

(4) Cut by the crosstie plate through more than 40 percent of a crosstie's thickness.

(d) Concrete crossties counted to satisfy the requirements set forth in paragraph (b)(4) of this section shall not be—

(1) Broken through or deteriorated to the extent that prestressing material is visible;

(2) Deteriorated or broken off in the vicinity of the shoulder or insert so that the fastener assembly can either pull out or move laterally more than ⅜ inch relative to the crosstie;

(3) Deteriorated such that the base of either rail can move laterally more than ⅜ inch relative to the crosstie on curves of 2 degrees or greater; or can move laterally more than ½ inch relative to the crosstie on tangent track or curves of less than 2 degrees;

(4) Deteriorated or abraded at any point under the rail seat to a depth of ½ inch or more;

(5) Deteriorated such that the crosstie's fastening or anchoring system, including rail anchors (see § 213.127(b)), is unable to maintain longitudinal rail restraint, or maintain rail hold down, or maintain gage due to insufficient fastener toeload; or

(6) Configured with less than two fasteners on the same rail except as provided in § 213.127(c).

(e) Class 1 and 2 track shall have one crosstie whose centerline is within 24 inches of each rail joint (end) location. Class 3, 4, and 5 track shall have either one crosstie whose centerline is within 18 inches of each rail joint location or two crossties whose centerlines are within 24 inches either side of each rail joint location. The relative position of these crossties is described in the following three diagrams:

(1) Each rail joint in Class 1 and 2 track shall be supported by at least one crosstie specified in paragraphs (c) and (d) of this section whose centerline is within 48 inches as shown in Figure 1.

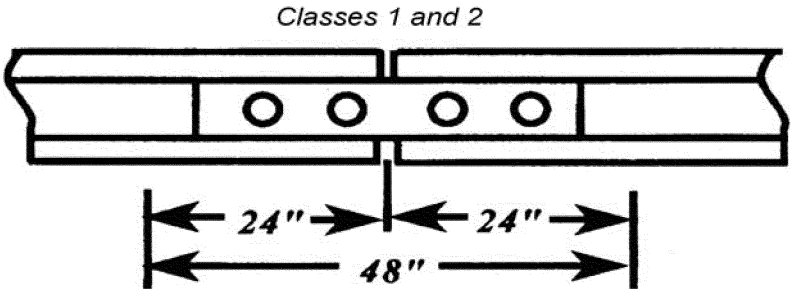

Figure 1

(2) Each rail joint in Class 3, 4, and 5 track shall be supported by either at least one crosstie specified in paragraphs (c) and (d) of this section whose centerline is within 36 inches as shown in Figure 2, or:

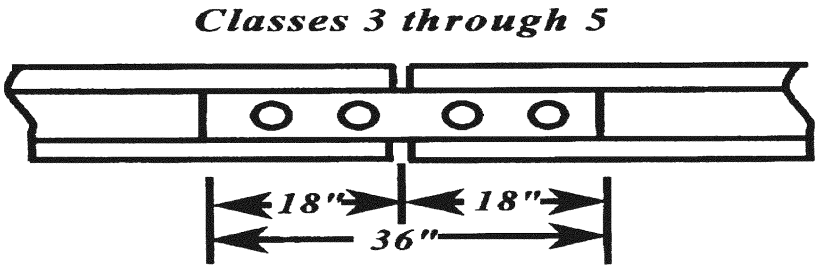

Figure 2

(3) Two crossties, one on each side of the rail joint, whose centerlines are within 24 inches of the rail joint location as shown in Figure 3.

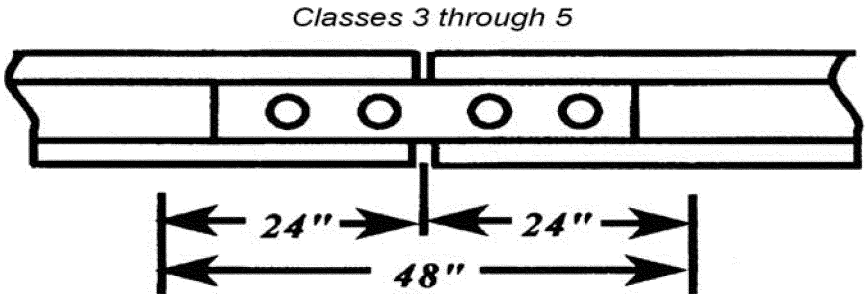

Figure 3

(f) For track constructed without crossties, such as slab track, track connected directly to bridge structural components, track over servicing pits, etc., the track structure shall meet the requirements of paragraph (b)(1) of this section.

■ 4. Section 213.127 is revised to read as follows:

§ 213.127 Rail fastening systems.

(a) Track shall be fastened by a system of components that effectively maintains gage within the limits prescribed in § 213.53(b). Each component of each such system shall be evaluated to determine whether gage is effectively being maintained.

(b) If rail anchors are applied to concrete crossties, the combination of the crossties, fasteners, and rail anchors must provide effective longitudinal restraint.

(c) Where fastener placement impedes insulated joints from performing as intended, the fastener may be modified or removed, provided that the crosstie supports the rail.

■ 5. A new § 213.234 is added to read as follows:

§ 213.234 Automated inspection of track constructed with concrete crossties.

(a) *General.* Except for track described in paragraph (c) of this section, the provisions in this section are applicable on and after January 1, 2012. In addition to the track inspection required under § 213.233, for Class 3 main track constructed with concrete crossties over which regularly scheduled passenger service trains operate, and for Class 4 and 5 main track constructed with concrete crossties, automated inspection technology shall be used as indicated in paragraph (b) of this section, as a supplement to visual inspection, by Class I railroads (including Amtrak), Class II railroads, other intercity passenger railroads, and commuter railroads or small governmental jurisdictions that serve populations greater than 50,000. Automated inspection shall identify and report exceptions to conditions described in § 213.109(d)(4).

(b) *Frequency of automated inspections.* Automated inspections shall be conducted at the following frequencies:

(1) If annual tonnage on Class 4 and 5 main track and Class 3 main track with regularly scheduled passenger service, exceeds 40 million gross tons (mgt) annually, at least twice each calendar year, with no less than 160 days between inspections.

(2) If annual tonnage on Class 4 and 5 main track and Class 3 main track with regularly scheduled passenger service is equal to or less than 40 mgt annually, at least once each calendar year.

(3) On Class 3, 4, and 5 main track with exclusively passenger service, either an automated inspection or walking inspection must be conducted once per calendar year.

(4) Track not inspected in accordance with paragraph (b)(1) or (b)(2) of this section because of train operation interruption shall be reinspected within 45 days of the resumption of train operations by a walking or automated inspection. If this inspection is conducted as a walking inspection, the next inspection shall be an automated inspection as prescribed in this paragraph.

(c) *Nonapplication.* Sections of tangent track 600 feet or less constructed of concrete crossties, including, but not limited to, isolated track segments, experimental or test track segments, highway-rail crossings, and wayside detectors, are excluded from the requirements of this section.

(d) *Performance standard for automated inspection measurement system.* The automated inspection measurement system must be capable of measuring and processing rail seat deterioration requirements that specify the following:

(1) An accuracy, to within ⅛ of an inch;

(2) A distance-based sampling interval, which shall not exceed five feet; and

(3) Calibration procedures and parameters assigned to the system, which assure that measured and recorded values accurately represent rail seat deterioration.

(e) *Exception reports to be produced by system; duty to field-verify exceptions.* The automated inspection measurement system shall produce an exception report containing a systematic listing of all exceptions to § 213.109(d)(4), identified so that an appropriate person(s) designated as fully qualified under § 213.7 can field-verify each exception.

(1) Each exception must be located and field-verified no later than 48 hours after the automated inspection.

(2) All field-verified exceptions are subject to all the requirements of this part.

(f) *Recordkeeping requirements.* The track owner shall maintain and make available to FRA a record of the inspection data and the exception record for the track inspected in accordance with this paragraph for a minimum of two years. The exception reports must include the following:

(1) Date and location of limits of the inspection;

(2) Type and location of each exception;

(3) Results of field verification; and

(4) Remedial action if required.

(g) *Procedures for integrity of data.* The track owner shall institute the necessary procedures for maintaining the integrity of the data collected by the measurement system. At a minimum, the track owner shall do the following:

(1) Maintain and make available to FRA documented calibration procedures of the measurement system that, at a minimum, specify an instrument verification procedure that ensures correlation between measurements made on the ground and those recorded by the instrumentation; and

(2) Maintain each instrument used for determining compliance with this section such that it accurately measures the depth of rail seat deterioration in accordance with paragraph (d)(1) of this section.

(h) *Training.* The track owner shall provide annual training in handling rail seat deterioration exceptions to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of § 213.234. At a minimum, the training shall address the following:

(1) Interpretation and handling of the exception reports generated by the automated inspection measurement system;

(2) Locating and verifying exceptions in the field and required remedial action; and

(3) Recordkeeping requirements.

Issued in Washington, DC, on March 24, 2011.

Joseph C. Szabo,

Administrator.

[FR Doc. 2011–7666 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2008–0071; 92220–1113–0000–C6]

RIN 1018—AW95

Endangered and Threatened Wildlife and Plants; Reclassification of the Okaloosa Darter From Endangered to Threatened and Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying the Okaloosa darter (*Etheostoma okaloosae*) from endangered to threatened under the authority of the Endangered Species Act of 1973, as amended (Act). The endangered designation no longer correctly reflects the current status of this fish due to a substantial improvement in the species' status. This action is based on a thorough review of the best available scientific and commercial data, which indicate a substantial reduction in threats to the species, a significant habitat restoration in most of the species' range, and a stable or increasing trend of darters in all darter stream systems. We also establish a special rule under section 4(d) of the Act. This special rule allows Eglin Air Force Base to continue activities with a reduced regulatory burden and will provide a net benefit to the Okaloosa darter.

DATES: This final rule is effective May 2, 2011.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405.

You may obtain copies of this final rule from the address above, by calling 850/769–0552, or at the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Don Imm, Field Supervisor, at the Panama City Field Office (*see* **ADDRESSES**) (telephone 850/769–0552; facsimile 850/763–2177). Individuals who are hearing-impaired or speech-impaired may call the Federal Information Relay Service at 800/877–8339 for TTY assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

We proposed listing the Okaloosa darter as endangered on January 15, 1973 (38 FR 1521) and listed the species as endangered under the Act (16 U.S.C. 1531 *et seq.*) on June 4, 1973 (38 FR 14678) due to its extremely limited range, habitat degradation, and apparent competition from a possibly introduced related species, the brown darter. We completed a recovery plan for the species on October 23, 1981, and a revised recovery plan on October 26, 1998.

On June 21, 2005, we provided notice in the **Federal Register** that we were initiating a 5-year status review under the Act for the Okaloosa darter (70 FR 35689).The 5-year status review was completed in July 2007, and is available on our Web site at *http://www.fws.gov/southeast/5yearReviews/5yearreviews/okaloosa_darterfinal.pdf.*

On February 2, 2010, we published a proposed rule to reclassify the Okaloosa darter from endangered to threatened and a proposed special rule under section 4(d) of the Act (75 FR 5263). We requested that all interested parties submit comments and information concerning the proposed reclassification of the Okaloosa darter. We provided notification of the publication of the proposed rule through e-mail, facsimile, telephone calls, letters, and news releases sent to the appropriate Federal, State, and local agencies; county governments; elected officials; media outlets; local jurisdictions; scientific organizations; interest groups; and other interested parties. We also posted the proposed rule on the Service's Panama

City Field Office Internet Web site following the rule's publication. We accepted public comments on the proposed rule for 60 days, ending April 5, 2010.

Background

The Okaloosa darter, *Etheostoma okaloosae,* is a member of the family Percidae. It is a small, perch-like fish (maximum size is 49 millimeters (mm) (1.93 inches (in.)) Standard Length) that is characterized by a well-developed humeral spot, a series of five to eight rows of small spots along the sides of the body, and the first anal spine being longer than the second. General body coloration varies from red-brown to green-yellow dorsally, and lighter ventrally, although breeding males have a bright orange submarginal stripe on the first dorsal fin (Burkhead *et al.* 1992, p. 23).

The endemic Okaloosa darter is known to occur in only six clear stream systems that drain into two Choctawhatchee Bay bayous in Walton and Okaloosa Counties in northwest Florida. Okaloosa darters are currently found in the tributaries and the main channels of the following six streams: Toms, Turkey, Mill, Swift, East Turkey, and Rocky Creeks. Approximately 90 percent of the 457 square kilometer (176 square mile) watershed drainage area that historically supported the Okaloosa darter is under the management of Eglin Air Force Base (AFB), and we estimate that 98.7 percent of the stream length in the darter's current range is within the boundaries of Eglin AFB. Eglin AFB encompasses the headwaters of all six of these drainages, and the remainder of the these streams flow out of Eglin AFB into the urban complex of the Cities of Niceville and Valparaiso (USAF 2006, p. 3–1).

Longleaf pine-wiregrass-red oak sandhill communities dominate the vegetation landscape in Okaloosa darter watershed basins. These areas are characterized by high sand ridges where soil nutrients are low and woodland fire is a regular occurrence. Where water seeps from these hills, acid bog communities develop of *Sphagnum* sp. (sphagnum moss), *Sarracenia* sp. (pitcher plants), and other plants adapted to low nutrient soils. In other areas, the water emerges from seepage springs directly into clear flowing streams where variation of both temperature and flow is moderated by the deep layers of sand. The streams support a mixture of *Mayaca fluviatilis* (bog moss), *Scirpus etuberculatus* (bulrush), *Orontium aquaticum* (golden club), *Sparganium americanum* (burr-weed), *Potamogeton diversifolius* (pondweed), *Eleocharis* sp. (spikerush), and other aquatic and emergent plants.

Okaloosa darters typically inhabit the margins of moderate- to fast-flowing streams where detritus, root mats, and vegetation are present. Historic densities averaged about two darters per meter (3.28 feet) of stream length while more recent abundance estimates show an increase to an average of 2.9 darters per meter (Jordan and Jelks 2004, p. 3; USAF 2006, p. 3–1). They are only rarely collected in areas where there is no current or in open sandy areas in the middle of the stream channel. The creeks with Okaloosa darters are generally shaded over most of their courses, with temperatures ranging from 7 to 22 degrees Celsius (°C) (44 to 72 degrees Fahrenheit (°F)) in the winter (Tate 2008, pers. comm.; Jelks 2010, pers. comm.) to 22 to 29 °C (72 to 84 °F) in the summer (Mettee and Crittenden 1977, p. 5; Jelks 2010, pers. comm).

Okaloosa darters feed primarily on fly larvae (*Diptera* sp.), mayfly nymphs (*Ephemeroptera* sp.), and caddis fly (*Trichoptera* sp.) larvae (Ogilvie 1980, as referenced in Burkhead *et al.* 1992, p. 26). The breeding season extends from late March through October, although it usually peaks in April. Spawning pairs have been videographed attaching one or two eggs to vegetation, and observed attaching eggs to woody debris and root mats (Collete and Yerger 1962, p. 226; Burkhead *et al.* 1994, p. 81). Ogilvie (1980, as referenced in Burkhead *et al.* 1992, p. 26) found a mean of 76 ova (unfertilized eggs) and 29 mature ova in 201 female Okaloosa darters, although these numbers may under-represent annual fecundity as the prolonged spawning season is an indication of fractional spawning (eggs develop and mature throughout the spawning season). Estimates of longevity range from 2 to 5 years (Burkhead *et al.* 1992, p. 27; Jordan 2010, pers. comm.).

Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. The Act directs that, to the maximum extent practicable, we incorporate into each plan:

(1) Site-specific management actions that may be necessary to achieve the plan's goals for conservation and survival of the species;

(2) Objective, measurable criteria, which when met would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the list; and

(3) Estimates of the time required and cost to carry out the plan.

However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Therefore, recovery criteria must indicate when a species is no longer endangered or threatened by any of the five factors. In other words, objective, measurable criteria, or recovery criteria contained in recovery plans, must indicate when we would anticipate an analysis of the five threat factors under 4(a)(1) would result in a determination that a species is no longer endangered or threatened. Section 4(b) of the Act requires the determination made be "solely on the basis of the best scientific and commercial data available."

Thus, while recovery plans are intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. Determinations to remove a species from the list made under section 4(a)(1) of the Act must be based on the best scientific and commercial data available at the time of the determination, regardless of whether that information differs from the recovery plan.

In the course of implementing conservation actions for a species, new information is often gained that requires recovery efforts to be modified accordingly. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more recovery criteria may have been exceeded while other criteria may not have been accomplished, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, that the Service may reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may be learned that was not known at

the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, planning, implementing, and evaluating the degree of recovery of a species that may, or may not, fully follow the guidance provided in a recovery plan.

Thus, while the recovery plan provides important guidance on the direction and strategy for recovery, and indicates when a rulemaking process may be initiated, the determination to remove a species from the Federal List of Endangered and Threatened Wildlife is ultimately based on an analysis of whether a species is no longer endangered or threatened. The following discussion provides a brief review of recovery planning for the Okaloosa darter as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the species.

The recovery plan for the Okaloosa darter was approved on October 23, 1981 (Service 1981, 18 pp.), and revised on October 26, 1998 (Service 1998, 42 pp.). The recovery plan identifies a recovery objective of downlisting, and eventually delisting, the Okaloosa darter by enabling wild populations capable of coping with natural habitat fluctuations to persist indefinitely in the six stream systems they inhabit by restoring and protecting stream habitat, water quality, and water quantity. The Okaloosa darter may be considered for reclassification from endangered to threatened (downlisted) when:

(1) Instream flows and historical habitat of stream systems have been protected through management plans, conservation agreements, easements, or acquisitions (or a combination of these);

(2) Eglin AFB has and is implementing an effective habitat restoration program to control erosion from roads, clay pits, and open ranges;

(3) The Okaloosa darter population is stable or increasing and comprised of two plus age-classes in all six stream systems for 5 consecutive years;

(4) The range of the Okaloosa darter has not decreased at all historical monitoring sites; and

(5) No foreseeable threats exist that would impact the survival of the species.

For more information on the recovery plan for the Okaloosa darter, a copy of the plan is posted on our Web site at *http://ecos.fws.gov/docs/recovery_plan/970407.pdf*.

Each of the above criteria for downlisting the Okaloosa darter to threatened has been met, as described below.

Downlisting Criterion (1): Instream flows and historical habitat of stream systems have been protected through management plans, conservation agreements, easements, or acquisitions (or a combination of these).

The management plans of several agencies apply to streams in the range of the Okaloosa darter and are being implemented to protect this fish's water quality and quantity and its overall habitat. Probably the most influential of these is Eglin's integrated natural resources management plan (INRMP) (USAF 2007; USAF 2009), including the Threatened and Endangered Species Component Plan (USAF 2006). The INRMP is updated annually and re-confirmed every 5 years in consultation with the Service and the Florida Fish and Wildlife Conservation Commission (FWC) (*see* Factor D. under the Summary of Factors Affecting the Species section, below, for further detail and description of Department of Defense (DOD) protections, and the Available Conservation Measures section, below, for Act protections). The INRMP defines goals and specific objectives for managing natural resources on the base. The primary goal of Okaloosa darter management on Eglin AFB is to provide the highest level of capability and flexibility to the military testing and training mission while meeting the legal requirements of the Act, the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*), and other applicable laws. Another goal of the 2009 INRMP is to maintain or restore hydrologic processes in streams, floodplains, and wetlands when feasible. The specific objectives of Okaloosa darter management on Eglin AFB include:

(1) Downlist the Okaloosa darter from endangered to threatened by the end of 2010, and delist the darter by the end of 2015;

(2) Annually restore 2 fish passage barriers from the 20 identified sites in Okaloosa darter drainages as funding allows;

(3) Develop a public information and awareness program for endangered and threatened species on Eglin AFB that have greater potential to be impacted by public activities, such as Okaloosa darters;

(4) Complete a program by 2010 that would include an Air Armament Academy (A3) class (combined with Endangered Species Act class), informational brochures, and portable display boards;

(5) Cooperate with the City of Niceville, Okaloosa County, and private landowners adjacent to Eglin AFB to recover the Okaloosa darter;

(6) Identify and rehabilitate 150 soil erosion sites that have the potential to impact endangered and threatened species (Gulf sturgeon *(Acipenser oxyrhynchus desotoi*) and Okaloosa darter) habitat by 2011; and

(7) Train and use Okaloosa darter monitoring crews and aquatic monitoring crews to survey and report the presence of invasive, nonnative plants and animals during their regular monitoring activities and treat invasive, nonnative plants as necessary.

Instream flows and historical habitat have been protected through Eglin AFB's removal of fish passage barriers (INRMP Objective 2) and rehabilitation of soil erosion sites that are impacting endangered and threatened species (INRMP Objective 6). Further recovery efforts to benefit stream flows and historic habitat have been planned, including training darter monitoring crews to report invasive species found during regular survey efforts (INRMP Objective 7).

In 2005, the Service, Eglin's Natural Resources Branch, The Nature Conservancy (TNC), and the FWC signed an agreement to cooperate in the stewardship of aquatic systems on lands of the Gulf Coastal Plain Ecosystem Partnership (GCPEP) in western Florida. GCPEP's Aquatic Team agreed to initially assign priority to strategies and projects that contribute to the recovery of the Okaloosa darter. We are working with GCPEP to use stream restoration techniques and management actions that have been established for Okaloosa darter watersheds on partner lands.

The Three Rivers Resource Conservation and Development Council (Council) is a nonprofit organization set up to conserve the natural resources for, and to improve the overall economic condition of, rural and urban citizens. The Council is composed of representatives from the county Commissions and Soil and Water Conservation Districts, and includes three members at large from Escambia, Santa Rosa, Okaloosa, Walton, Bay, Washington, and Holmes Counties in Florida. The Council has developed an Area Plan (2003–2008), which includes:

(1) A natural resources goal of encouraging proper management use and protection of the natural resource base;

(2) An objective to assist local military bases in conservation planning efforts;

(3) A strategy to continue a non-point project to control erosion with Eglin AFB; and

(4) A strategy for habitat restoration, including four recently completed

projects that replaced or rehabilitated undersized or improperly placed culverts as well as eliminated sedimentation from roadway runoff.

The Eglin golf course dominates land use in the Mill Creek Basin. Along with West Long Creek in the Rocky Creek Basin, these are the same drainages where monitoring suggests darter numbers have been declining in recent years. The Service and Eglin AFB have recently completed a habitat restoration project in the portion of Mill Creek that runs through the Eglin golf course. Work is ongoing to assess causes of declines in East Turkey and West Long Creeks.

The Choctawhatchee Basin Alliance (a citizen's group), along with supporting State and Federal agencies, is implementing a program called "Breaking New Ground," which is a set of place-based air and watershed action plans for the Choctawhatchee River and Bay watershed. These plans address water quality monitoring, point and non-point source pollution, growth management, water supply, education, and citizen involvement in all Choctawhatchee Bay watersheds, including the darter drainages. This planning effort has resulted in the funding of studies to assess point and non-point source water pollution in the basin, including darter watersheds, and is expected to continue to assist in identifying and addressing potential long-term water quality and supply issues in the watershed, which is a positive step towards securing permanent protections for Okaloosa darter water quality and quantity.

In addition, the Northwest Florida Water Management District (NWFWMD) (in conjunction with the Florida Department of Environmental Protection (DEP) has a Surface Water Improvement and Management (SWIM) Plan that addresses water issues in the Choctawhatchee River and Bay System, including the projected water supply needs of the coastal portions of Okaloosa and Walton Counties. Protecting water-dependent endangered species and their habitats are integral components of the SWIM Plan. In its water supply plan for the counties that encompass the range of the darter, the NWFWMD examines the water sources that could supply growing human water demands in the region (Bartel *et al.* 2000). Depending on its magnitude and spatial distribution, substantial new use of the Sand and Gravel Aquifer could diminish stream flow in the darter streams; however, the potential well fields that the NWFWMD identified are located south and west of the darter drainages.

The opportunities for easements or acquisitions or both to protect the Okaloosa darter are limited, because over 90 percent of its historic range is on Federal land. The Service is currently working with FWC and a private landowner to secure a conservation easement for the portion of East Turkey Creek between the Eglin AFB boundary and Choctawhatchee Bay. This easement would help to secure nearly all of East Turkey Creek inhabited by Okaloosa darters outside the boundaries of Eglin AFB. Because Eglin AFB and others have demonstrated a commitment to recovery of the Okaloosa darter through natural resources management planning and coordination with the Service, we consider this downlisting criterion to be satisfied.

Downlisting Criterion (2): Eglin AFB has (and is implementing) an effective habitat restoration program to control erosion from roads, clay pits, and open ranges.

Accomplishments have been made in recovering Okaloosa darter habitat, and the Service continues to work with Eglin AFB, the City of Niceville, and Okaloosa and Walton Counties to restore additional habitat through the removal and replacement of road crossings and impoundments throughout the darter's range.

Eglin AFB is implementing an effective habitat restoration program to control erosion from roads, borrow pits (areas where materials like sand or gravel are removed for use at another location), and cleared test ranges. Since 1995, Eglin AFB has restored 317 sites covering 196.2 hectares (ha) (484.8 acres (ac)) that were eroding into Okaloosa darter streams. All 38 borrow pits within Okaloosa darter drainages are now stabilized (59.3 ha; 146.5 ac) (USAF 2005, p. 3–18). The other 279 sites (136.9 ha; 338.3 ac) included in the total area are characterized as non-point sources (pollution created from larger processes and not from one concentrated point source, like excess sediment from a construction site washing into a stream after a rain) of stream sedimentation. Eglin AFB estimates that these efforts have reduced soil loss from roughly 69,000 tons per year in darter watersheds in 1994, to approximately 2,500 tons per year in 2010 (Pizzolato 2010, pers. comm.). As of 2006, Eglin AFB had completed about 95 percent of the erosion control projects identified for the darter watersheds (USAF 2006, p. 3–5). Restoration activities began earlier in the Boggy Bayou drainages. Accordingly, darter numbers increased in the Boggy Bayou drainages earlier than in the Rocky Bayou drainages. Increases in darter numbers over the past 10 years generally track the cumulative area restored during that timeframe (Jordan and Jelks 2004, p. 9).

Many road crossing structures have been eliminated as part of Eglin AFB's restoration activities. Of the 152 road crossings that previously existed in Okaloosa darter drainages, 57 have been eliminated: 28 in Boggy Bayou streams, and 29 in Rocky Bayou streams. Most of these were likely barriers to fish passage or problems for stream channel stability, and removing them has improved habitat and reduced population fragmentation. We have determined that 21 of the remaining road crossings are barriers to fish passage. Many of these are culverts with the downstream end perched above the stream bed, precluding the upstream movement of fish during normal and low-flow conditions. Ten of the 21 barriers are of little to no adverse consequence to darter habitat connectivity because they occur on the outskirts of the current range or are immediately adjacent to another barrier or impoundment. However, darters downstream of the 11 remaining barriers cannot move upstream during normal and low-flow conditions. To date, 7 of these have been removed or replaced with appropriate structures and the remaining 4 will be removed in 2011.

Impoundments may also fragment darter habitat and populations. As of 2005, there were 32 impoundments within the darter's range. Most of these are the result of beaver activity at road-stream crossings, and some are located within reaches from which darters are extirpated or in headwater regions of streams where darters are typically found only in low densities. As part of the road-stream crossing rehabilitation work, Eglin has prioritized restoration or replacement of road-stream crossings where beaver activity has impounded stream flow. Major projects under this program include multi-partner stream restoration efforts in Little Rocky Creek and Toms Creek. These projects required removal of historical railroad crossings that had been impounded by beavers and included greater than 100 meters of natural channel design and construction.

Manmade structures accounted for 12 of the 32 impoundments in Okaloosa darter watersheds. Working with the Service, the Council, FWC, and the Mid-Bay Bridge Authority (MBBA), Eglin AFB has removed six recreational impoundments, including all impoundments in the Turkey Creek watershed. Two major stream restoration projects have been

conducted on Eglin AFB, both utilizing natural channel design to eliminate impoundments and fish passage barriers while promoting public recreation.

In FY 2007, Eglin AFB restored portions of Mill Creek within the Falcon and Eagle golf course. Staff from Eglin Natural Resources, the Eglin golf course, and the Service determined that it was feasible to restore all impoundments upstream of Plew Lake, the largest impoundment on the system, to free-flowing streams and to remove all but one of the culverts that convey the stream underneath fairways on the golf course. Present in the smallest of the six darter watersheds, the darter population in Mill Creek is probably most vulnerable to extirpation. Within one year of completion, Okaloosa darters had colonized the entire restoration project and recruitment had been observed. We anticipate that restoration at Mill Creek will help maintain a viable population in the Mill Creek system.

In 2009, a partnership including Eglin AFB, the Service, FWC, and MBBA initiated a restoration of Anderson Pond and the adjacent campground and recreation area. As part of this project, the impoundment was removed, and over 1000 meters of stream channel were constructed. A new pond was excavated in a portion of the original impoundment to accommodate fishing and other recreational activities. This project has reconnected darters isolated in the headwater reaches of Anderson Branch with the Turkey Creek population and re-established habitat for an estimated 1,500 to 2,000 darters. Both the Mill Creek and Anderson Pond projects accomplished stream restoration while promoting outdoor recreation and education opportunities for the public.

Based on the observations shared above, Eglin AFB has effectively implemented this downlisting criterion and continues to make additional progress in reducing remaining erosion problems on the base. These actions appear to be associated with identifiable increases in Okaloosa darter numbers and occupied range. We will continue to partner with Eglin AFB to find similar opportunities like Mill Creek and Anderson Pond to restore habitat. Because Eglin AFB and others have demonstrated a commitment to recovery of the Okaloosa darter through natural resources management planning and coordination with the Service, we consider this downlisting criterion to be satisfied.

Downlisting Criterion (3): Okaloosa darter population is stable or increasing and comprised of two plus age-classes in all six stream systems for 5 consecutive years.

We had no estimate of population size at the time of listing, although the historic range of the Okaloosa darter is fairly well documented. Relative abundance estimates were determined annually from 1987–88 to 1998 at Eglin AFB. Bortone (1999, p.15) compared the relative abundance (number per sampling hour) of darters at 16 to 18 stations over 10 sampling seasons. The mean number of Okaloosa darters per sample (in those samples that yielded darters) was slightly lower in the earlier sampling period (1987 to1991), higher during the middle sampling years (1992 to 1997), and distinctly lower in 1998 and 1999. Bortone (1999, p. 9) concluded that this may not have indicated an overall trend in the reduction in Okaloosa darters as much as it may be indicative of changes that specifically reduced preferable habitat and increased sampling effectiveness at certain sites, as several sites were altered by beaver activity while others became more rooted with undergrowth. Generally, the data do not indicate any overall major trends in decline or increase during the 10-year sampling period (Bortone 1999, p.10).

The U.S. Geological Survey (USGS) and Loyola University New Orleans has surveyed between 12 and 60 sites for Okaloosa darters annually since 1995 (Jordan and Jelks 2004, p. 2). Their methodology has evolved into counting darters in 20-m (66-ft) segments using mask and snorkel visual surveys, and includes collection of habitat conditions such as water depth, stream discharge, substrate type, and canopy cover. Collectively, Jordan and Jelks' data show an almost tripling of darter numbers in a 10-year timeframe, from an average of about 20 darters per 20-m (66-ft) segment sampled in 1995, to about 55 darters per segment in 2004. Dips in Okaloosa darter densities occurred in 2001–02 and in 2009, which corresponded with years of regional drought conditions. Even during these years, however, darter numbers were almost double those of 1995 and 1996.

The current rangewide total population estimate, estimated by applying Jordan and Jelks (2004, p. 3) study area-wide density estimate of 3.1 darters per meter (m) (or per 3.28 feet) to our estimates of occupied stream length in each of the six Okaloosa darter basins, is 802,668 darters with an estimated 625,279 mature individuals (Service 2007, Table 2). In order to expand the surveyed range of the species, 69 sites were seine surveyed in 50-m (164-ft) segments by the Service in 2004–05, with many of those being outside the area surveyed by Jordan and Jelks (2004). Observed segment densities were transformed to local abundance estimates based upon the Jordan *et al.* (2008, pp. 316–318) comparison of seine versus visual counts and depletion sampling. These surveys produced an overall density estimate of 1.28 darters per meter (or per 3.28 ft) and an abundance estimate of 259,355 mature individuals (Service 2007, Table 3). This estimate is very conservative because seining typically only recovers about a third of the Okaloosa darters detected visually (Jordan *et al.* 2008, p. 318) For more information on sampling methods, *see* the Service's 2007 5-year status review of the Okaloosa darter (Service 2007).

Standardized sampling since the status review continues to show robust numbers of Okaloosa darters. A visual survey conducted in 2009 showed an average density of 3.1 ± 2.3 Okaloosa darters per linear meter (Jelks pers. comm. 2010).

Downlisting criterion number (3) is further defined in Appendix A of the Okaloosa darter recovery plan to include a specific standardized sampling methodology. An operational definition of a "stable" population is also provided in Appendix A of the recovery plan. The definition of a "stable" population applies to 26 long-term monitoring sites and has three parts:

(1) Okaloosa darter numbers remain above 1.75 standard deviations below the cumulative long-term average at each of the monitoring sites;

(2) The long-term trend in the average counts at each monitoring site is increasing, or neutral; and

(3) The range that the species inhabits is not decreased by more than a 500-meter (1,640.4-ft) stream reach within any of the six stream systems.

Although the darter meets the criterion for a stable population, the validity of the criteria in the operational definition of "stable" has come into question since 1998, when the recovery plan was prepared. As identified in our 2007 5-year status review of the Okaloosa darter (Service 2007, p. 6), monitoring has shown that natural variation coupled with sampling method (seining versus visual survey) might result in a variation greater than 1.75 standard deviations while still maintaining a stable or increasing trend. Therefore, we have found that this operational definition may no longer reflect the true status of the species. We plan to revise the recovery criteria to incorporate advances in population assessment that use variation at specific localities while incorporating adjustments for sampling error.

Current estimates of Okaloosa darter numbers were calculated using two different methods of standardizing monitoring and survey data. The first method used visual surveys in 28 20-m (66-ft) segments of stream encompassing the six principal basins; a study area-wide density estimate was applied to the known occupied stream length for a 2004 total population estimate of 802,668 darters with 95 percent confidence interval (CI) ranging from 503,457 to 1,323,597 (Service 2007, Table 2). The second method transformed seine sample density estimates to local abundance estimates, based upon the Jordan *et al.* (2008) comparison of seine versus visual counts and depletion sampling, to calculate a 2004–05 population estimate of 259,355 with 95 percent CI ranging from 216,120 to 302,590 darters (Service 2007, Table 3). Acknowledging the greater error likely associated with the seine-based calculations, they provide a more conservative population estimate; however, both estimates are large given the naturally small range of the species.

As identified in our 2007 5-year status review (Service 2007, p. 6–7), the long-term trend in the average counts at each monitoring site indicated that the four smallest darter watersheds (Toms, Swift, Mill, and East Turkey), as well as West Long Creek and East Long Creek, were decreasing while the watersheds of Rocky Creek and Turkey Creek were increasing. However, sampling conducted since restoration activities on Mill Creek were completed indicates that darter numbers are now increasing. Using the estimated length of occupied habitat for these creeks, darter numbers are stable or increasing in 86 percent of their current range and decreasing in 14 percent of their current range. All of the declining trends were sampled by seining, not visual surveys, and may reflect variable sampling efficiency over time. For example, one site has become almost impossible to seine due to the exposure of tree roots resulting from stream bed degradation. Because seining detects only about 32 percent as many Okaloosa darters as visual surveys (Jordan *et al.* 2008, p. 313), the long-term trends in darter counts at sites sampled by seine may not reflect actual trends. Furthermore, there appears to be a reduction in numbers at many of the sites in 1998 to 2000, prior to which counts appear to be relatively consistent or generally increasing, which correspond to a drought that began in 1998. Following 1998, the darter counts at these sites follow a stable or increasing trend at reduced densities (Service 2007, Figure 6). Because recovery criteria were based on data collected in years with normal rainfall, variation associated with droughts could not be accounted for and strict interpretation of criteria is likely not biologically appropriate.

The range of the Okaloosa darter is represented as the cumulative stream length of occupancy in a basin. However, the annual monitoring identified in the recovery plan is not specifically designed to measure the length of a range reduction. Therefore, we are unable to determine whether part (3) of the operational definition of "stable" (A population will be considered stable if * * * (3) the range that the species inhabits is not decreased by more than a 500-meter (1,640.4-ft) stream reach within any of the six stream systems) has been met. Further, as noted previously, seining has been shown to detect only about 32 percent as many darters as visual surveys (Jordan *et al.* 2008, p. 313), increasing the probability of incorrectly concluding that darters are absent when using this survey method. Therefore, we do not feel that this aspect of the definition of "stable" is appropriate.

Okaloosa darters population numbers have increased since 1995, and have remained consistently stable at all sites where current sampling techniques are utilized. Annual population monitoring by USGS and Loyola University New Orleans has detected young-of-the-year and adult fish in all six stream systems for the past 13 years (Service 2007). Okaloosa darters appear to have expanded their range in Mill Creek following habitat restoration activities in 2007, and have been collected in the southern/western tributary of Toms Creek previously thought to be uninhabited. We have not observed extirpation at any of the monitoring sites since 1998, and sampling conducted in 2009 continues to show robust numbers of Okaloosa darters. Acknowledging the limitations in the criteria outlined in Appendix A of the recovery plan, we consider this downlisting criterion to be satisfied.

Downlisting Criterion (4): The range of the Okaloosa darter has not decreased at all historical monitoring sites.

As noted above, trends in the range of the Okaloosa darter are difficult to interpret. Darters have expanded their range in Mill Creek as a result of habitat restoration. A recent collection of darters from the southern/western tributary of Toms Creek may represent an additional range expansion; however, additional field surveys will be necessary to determine the extent and stability of the occupied habitat. If Okaloosa darters are established in this tributary, this would represent a range expansion of about 2.25 kilometers (1.4 miles). The Okaloosa darter has been extirpated from about 9 percent of the 402 km (249.8 mi) of streams that comprise its total historical range. Nearly all of these impacts occurred prior to the original recovery plan in 1984, and most were likely prior to the species listing in 1973. The Swift Creek monitoring site is the only established monitoring site where an extirpation appears to have occurred. This is evidenced by a single collection of 2 individuals in 1987; otherwise Okaloosa darters have not been collected at this site. Because local extirpation occurred more than 20 years ago, the darter has expanded its range in Mill Creek and Toms Creek, and we have not witnessed a reduction in range since the revision of the recovery plan in 1998, we consider this criterion to be met.

Downlisting Criterion (5): No foreseeable threats exist that would impact the survival of the species.

At this stage of the recovery of Okaloosa darter, threats remain under Listing Factor A: the present or threatened destruction, modification, or curtailment of the species' habitat or range. Resource stewardship on Eglin AFB is generally reducing the threat of habitat destruction and range reduction from sedimentation from unpaved roads and areas adjacent to poorly designed or maintained paved roads. As of 2006, about 95 percent of the erosion control projects identified in darter watersheds had been completed (USAF 2007, pp. 3–5). Eglin AFB is continuing to fund these projects to completely eliminate the threat. We will continue to work with Eglin AFB to remove remaining erosion sources or point and non-point pollution sources in Okaloosa darter habitat. In addition, stream restoration projects have been completed, and new projects are being considered on Eglin AFB. We will work with Elgin AFB to ensure Okaloosa darter habitat is protected.

Although water quality issues associated with the Niceville landfill and sprayfield continue to threaten the darter, they are being examined in a research project, which began in 2007. We recently worked with the City of Niceville to improve its wastewater collection system and install more appropriate culverts at a number of road crossings. In addition, as stated above, a few of the Okaloosa darter's streams have been indicated as potentially impaired due to biological indicators. We will continue to work with Eglin AFB and the city of Niceville to

determine the causes of impairment and remove them.

Proposed plans to assign additional military forces to Eglin AFB may alter the military mission and could potentially impact Okaloosa darter populations; however, we do not anticipate any increase in threats from this action as the new ranges have been moved outside of Okaloosa darter habitat. Eglin AFB has also agreed to provide a 300-ft. buffer along all darter streams when conducting any troop maneuvers. On the smaller creeks, where we noted a general long-term decline in average counts, we will continue to investigate using survey protocols whether habitat attributes at these sites are the cause.

The Okaloosa darter was listed in 1973 as an endangered species. At the time of listing, the species faced significantly greater threats than it does today, as evidenced by the numerous recovery actions to date that have improved and restored its habitat conditions. These recovery actions include completing 95 percent of the erosion control projects identified in darter watersheds, thereby significantly reducing the most intense threat to the species (*see* the Summary of Factors Affecting the Species section below for further details). Now, more than 35 years after it was listed under the Act, the Okaloosa darter's overall status has improved. Given that the threats to the species have been significantly reduced, we have determined that the Okaloosa darter has recovered to the point where it now meets the definition of a threatened species—one that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." In other words, although some threats to the Okaloosa darter continue to exist, these threats are not likely to cause the species to become extinct throughout all or a significant portion of its range within the foreseeable future. Data collected on the distribution and abundance of the species indicate that the species' range has expanded and overall population numbers are increasing. The Okaloosa darter has met all five downlisting criteria in its recovery plan.

Summary of Comments and Responses

During the 60-day comment period on the proposed rule, which began on February 2, 2010, and ended on April 5, 2010 (75 FR 5263), we received only two written comments, both of which supported both reclassification of the Okaloosa darter from endangered to threatened and the special rule. The proponents of the reclassification included the FWC and TNC. We received no public hearing requests. In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from three knowledgeable individuals who have expertise with the species and the geographic region where the species occurs and are familiar with conservation biology principles. We received comments from all three of the peer reviewers. The reviewers were affiliated with the State of Florida, a Louisiana university, and a Federal Government agency. Reviewers provided additional factual information, as well as minor corrections and input on our interpretation of existing information. In general, all peer reviewers concurred with the downlisting of the Okaloosa darter to threatened status and the special rule. We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the proposed reclassification. Substantive comments we received during the comment period have been addressed below and, where appropriate, incorporated directly into this final rule. The comments are grouped below according to peer review or public comments.

Peer Review/State Comments

(1) *Comment:* One reviewer expressed concern for the population of Okaloosa darters in Shaw Still Branch, a tributary to Swift Creek, due to isolation resulting from College Pond and habitat degradation.

Response: We agree that the population in Shaw Still Branch should be closely monitored and that restoration of College Pond should be considered; however, the Okaloosa darter population and suitable habitat persist in this stream. In addition, there has been a stable or increasing trend of darters in all darter stream systems, including Swift Creek. We do not feel that the genetic isolation of the Shaw Still Branch darter population precludes reclassification from endangered to threatened, which is based on an assessment of the species' status and threats as a whole.

(2) *Comment:* Two reviewers expressed concern over the Mid-Bay Bridge Connector Road and long-term secondary and cumulative effects to the Okaloosa darter.

Response: We recently completed consultation under section 7(a)(2) of the Act on this road project and have updated the discussion of this project in this rule (*see* Summary of Factors Affecting the Species; *Factor A.* discussion). We found that the proposed Mid-Bay Bridge Connector Road is not likely to jeopardize the continued existence of the Okaloosa darter. There are many conservation measures in place to minimize the impacts of the roadway, and the potential secondary and cumulative effects will be minimized through efforts to work with with private property owners to protect floodplain and riparian habitat and reduce threats along Okaloosa darter streams. Given the specific extensive conservation measures included in the project, we do not consider the Mid-Bay Bridge Connector Road to be a significant threat to Okaloosa darters.

(3) *Comment:* Although the sand and gravel aquifer that feeds the darter drainages is not currently used for human consumption, one reviewer expressed concern that plans for wellfields have been proposed within Okaloosa darter drainages.

Response: We are not aware of any proposals to directly use the sand and gravel aquifer for human consumption. The NWFWMD has recently announced plans for an offline reservoir in the Shoal River (Yellow River watershed) to supply drinking water to Okaloosa County. This action will use surface water and is outside the primary recharge area for streams inhabited by the Okaloosa darter; therefore, we believe there will be little to no impact on Okaloosa darters related to this offline reservoir. Eglin AFB, the cities of Niceville and Valparaiso, and Okaloosa County have not indicated plans to establish wellfields in the foreseeable future.

(4) *Comment:* One reviewer expressed concern that the proposed rule recommended delisting by 2012.

Response: The proposed rule actually noted that Eglin AFB's INRMP goals for darter management recommended delisting by 2012. The proposed rule was updated to reflect the most recent annual update of the INRMP, which now recommends delisting by 2015. In any case, this is Eglin AFB's recommendation, and does not reflect the views of the Service. A determination to remove a species from the Federal List of Endangered and Threatened Wildlife is made by the Service and is based on an analysis of whether a species is no longer endangered or threatened.

(5) *Comment:* One reviewer was concerned that our population estimate was inflated because we assumed that all stream segments within the six darter drainages are suitable for Okaloosa darters.

Response: We did not assume that all stream segments within the six Okaloosa darter drainages are suitable

for Okaloosa darters when we derived the population estimate of 802,668 darters. A complete description of the methods we used to derive the amount of suitable habitat can be found in Service 2007, pages 16–18. In general, we calculated the total stream length within the Okaloosa darter drainages and then subtracted the impoundments and the segments that we believe no longer support Okaloosa darters from total stream length. However, we still believed that not all portions of the remaining stream length were necessarily suited for Okaloosa darters. To correct for this bias, we applied darter/habitat relationships to estimate the proportion of potential habitat that may be occupied. We estimated that for the roughly 365 km of potential darter habitat, about 261 km would be occupied, and estimated the population accordingly.

(6) *Comment:* One reviewer noted that the fixed station sampling methodology may only be capturing a localized density increase, not a true population increase.

Response: We agree with the reviewer that alternative study designs to fixed station sampling, such as random site selection, can provide more robust conclusions about population trends. The critique of fixed site sampling is that nonrepresentative data may be collected, thereby increasing the chance of incorrect conclusions. In the case of fixed station sampling of Okaloosa darters, we believe the chances of collecting nonrepresentative data are fairly low. The fixed stations occur across multiple sites in all six darter drainages. The number of sites has been high, with anywhere from 12 to 60 sites sampled annually since 1995, and collectively these data show an almost tripling of darter numbers in a 10-year timeframe. In addition, Okaloosa darters appear to have expanded their range in Mill Creek and possibly in a tributary of Toms Creek previously thought to be uninhabited. Therefore, we believe it is reasonable to conclude that the overall increasing trend in the fixed station sampling data is likely reflecting an increase in the Okaloosa darter population as a whole.

(7) *Comment:* One reviewer was concerned that the Service redefined recovery criteria so as to minimize the importance of population declines and extirpations in areas outside of Eglin AFB in order to expedite the reclassification process.

Response: This comment was first directed at the language under the Recovery section of the proposed rule (75 FR 5265; February 2, 2010) that describes how precise attainment of all recovery criteria is not a prerequisite for downlisting. In addition, within each recovery criterion, the reviewer believes we have redefined the Okaloosa darter population to be those darters on Eglin AFB and thereby implied that the 1.3 percent of the current geographic range that is outside of Eglin AFB is of marginal importance. We do not agree with this comment because we manage the Okaloosa darter as a whole across its range and have to address its status and threats it faces across its range. A determination to reclassify a species' status on the Federal List of Endangered and Threatened Wildlife is ultimately based on an analysis of whether a species is no longer endangered or no longer threatened. Based on the best available scientific information, the population as a whole has increased, and its threats have decreased within 98.7 percent of its current range and 90 percent of its historic range. We agree with the reviewer that the populations of Okaloosa darters outside of Eglin AFB are important to the overall population resiliency and for full recovery and delisting of the species.

(8) *Comment:* One reviewer expressed concern that we did not use the best scientific data available because we did not rely on a recent unpublished study on the degree of genetic distinction in Okaloosa darters among streams. The study found that each of the six Okaloosa darter drainages support genetically unique populations. The reviewer felt that the populations outside Eglin AFB in Mill, Swift, and East Turkey creeks are in danger of extinction and recommended that the Service consider reclassifying only populations of Okaloosa darters in the Toms, Turkey, and Rocky creek drainages and leave populations in the Mill, Swift, and East Turkey creek drainages as endangered.

Response: We did not include the findings of this study in our analysis because at the time the proposed rule was published, this study was not available. The authors only very recently completed a final report and submitted it for publication in a peer-reviewed journal (Austin *et al.* 2010, unpublished data). In summary, the authors conducted mitochondrial and nuclear DNA analyses to determine the degree of genetic distinction among streams. They found that Toms Bayou, Boggy Bayou, and Rocky Bayou are three evolutionarily significant units and, to a lesser extent than the bayous, all six streams are genetically unique. They also found that robust historical genetic estimates of abundance and recent census estimates support the decision to reclassify the Okaloosa darter to threatened.

Based on the subtly different genetic characteristics of these six streams, it is conceivable that extirpation of Okaloosa darters in any of the six streams would result in a loss of genetic variation. While we acknowledge there have been localized declines in the populations in Mill, Swift, and East Turkey creeks, we do not agree that darters are in danger of extirpation from these creeks. Darter populations in Mill Creek have been increasing since restoration was completed, and we expect this restoration will result in a viable, sustainable population. In addition, significant parts of all three of these streams are located on Eglin AFB, where resource stewardship and protection is generally reducing the threat of habitat destruction and range reduction. Outside of Eglin's borders, we are working with the City of Niceville and private landowners to reduce threats to Okaloosa darters. The status of the species as a whole has improved and threats have decreased in all six streams. We will continue to work with the authors as we work towards recovery of the Okaloosa darter.

(9) *Comment:* One reviewer disagreed with how we defined "significant portion of the range," noting that if we considered the six drainages separately based on genetic differences noted in Austin *et al.* (2010, unpublished data), there is considerable likelihood that Okaloosa darter is in danger of extinction in a significant portion of its range due to the more pronounced threat in the areas outside of Eglin AFB.

Response: The Okaloosa darter was listed due to threats across its entire range. In our evaluation of significant portion of the range for this species, we assessed threats across the landscape to determine if any areas were experiencing unique impacts. We then determined if those areas were significant to the species as a whole as further described below in the Significant Portion of the Range section of this rule. In evaluating this comment, we determined that, although each drainage may possess slightly different genetics (Austin *et al.* 2010, unpublished data), the drainages are all subject to similar threats. The area outside of the Eglin AFB was not considered a significant portion of the range, because this area is small and is similar in structure to habitat found throughout the rest of the species' range. We have determined that there are no portions of the range that qualify as a significant portion of the range for the darter.

(10) *Comment:* One reviewer disagrees that almost all of the human activities that may affect the existing darter population are Federal actions.

Response: Of the darter's current range, 98.7 percent is on Federal lands, and the remaining 1.3 percent occurs downstream of the boundaries of Eglin AFB. We agree that there are human activities that impact the darter in the 1.3 percent of the darter's range outside of Eglin AFB; however, almost all of the darter's range is within Federal lands and subject to Federal statutes and regulations, including the Sikes Act and Sikes Improvement Act, the Act, and the CWA, as well as other applicable State laws. Furthermore, any State, local, and private projects outside of Eglin AFB that use Federal funds or require Federal permits must undergo section 7 consultation under the Act.

(11) *Comment:* One reviewer expressed concern for delisting by asking how the Okaloosa darter can be delisted given that the species was primarily listed due to a restricted geographic range and that will never change.

Response: The Service is not considering delisting the species at this time. The determination to remove a species from the Federal List of Endangered and Threatened Wildlife is based on an analysis of whether a species is no longer endangered or threatened by any of the five factors: (1) Habitat modification, destruction, or curtailment; (2) overutilization of the species for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. The Okaloosa darter was initially listed not only due to its restricted range but also because of habitat degradation from roads, dams, and land clearing, and the threat of competition with brown darters. Delisting the species would involve a full assessment of these and other threats impacting the Okaloosa darter in consideration of its restricted range. As discussed throughout this rule, there has been a substantial reduction in threats to the species' habitat, and brown darters do not appear to be a significant threat to its recovery. There are still actions needed for the Okaloosa darter to continue to recover, including cooperative agreements to protect and restore habitat, water quality, and water quantity outside of Eglin AFB, and the continued improvement and maintenance of water quality and riparian habitat on Eglin AFB.

(12) *Comment:* One reviewer expressed concern regarding the enforcement of the Act as it relates to Okaloosa darter in areas that occur outside of Eglin AFB.

Response: All State, local, and private projects outside of Eglin AFB that use Federal funds or require Federal permits (for example CWA section 404 dredge-and-fill permits) must undergo section 7 consultation under the Act. In addition, under section 9 of the Act, "take" (defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct in section 3(19) of the Act) will still be prohibited on private lands as it was when the species was listed as endangered. The special rule under section 4(d) of the Act does not remove the prohibitions against take outside of Eglin AFB's habitat restoration projects. The Service also works proactively with the Florida Fish and Wildlife Conservation Commission and private landowners to facilitate darter habitat restoration off of Eglin AFB.

Public Comments

The following public comment addresses issues that were not raised by the peer reviewers. If an issue brought up by a peer reviewer was also raised by the public, it is discussed above in the peer review comment section rather than below.

(13) *Comment:* In relation to additional subpopulations of Okaloosa darters, one commenter suggested we conduct an assessment of other stream systems within the Rocky Bayou drainage that may have historically contained the Okaloosa darter. The commenter also described a stream restoration project in Puddin Head Lake, a steephead stream system adjacent to the Rocky Creek watershed, noting that this stream may have historically contained Okaloosa darters and recommended that the Service consider this stream restoration project as a current activity that may benefit the Okaloosa darter.

Response: We agree and plan to evaluate other streams within all three bayous that may have historically contained Okaloosa darters to locate suitable habitat and possible additional populations. Okaloosa darters do not occur in Puddin Head Lake, but we plan to evaluate restored habitat within the Puddin Head stream and other locations that may have historically contained Okaloosa darters as potential sites for reintroduction.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from the Federal Lists of Endangered and Threatened Wildlife and Plants. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the "species" is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. Those factors are: (1) Habitat modification, destruction, or curtailment; (2) overutilization of the species for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. We must consider these same five factors in reclassifying or delisting a species. Listing, reclassifying, or delisting may be warranted based on any of the above threat factors, either singly or in combination.

For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting.

The following threats analysis examines the five factors currently affecting, or that are likely to affect, the Okaloosa darter within the foreseeable future. For the purposes of this analysis, we will first evaluate whether the currently listed species, the Okaloosa darter, should be considered endangered or threatened throughout its range. Then we will consider whether there are any portions of the species' range where it is in danger of extinction or likely to become endangered within the foreseeable future.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Okaloosa darter was listed under the Act in 1973, because of its extremely limited range and potential problems resulting from erosion, water impoundment, and competition with brown darters. The Okaloosa darter has been extirpated from about 9 percent of the 402 km (249.8 mi) of streams that

comprise its total historical range. This historic loss of range is most likely due to physical and chemical habitat degradation from sediment and pollutant loading and the urbanization of the City of Niceville coupled with historic impacts originating on what is now Eglin AFB. Recent surveys in a southern/western tributary of Toms Creek, however, have established the darter's presence in a stretch of stream previously thought to be uninhabited. At present, all but 5 km (3.1 mi), or 1.3 percent, of the current range is also currently within Eglin AFB.

Sedimentation and Erosion

Sediment loading is perhaps the most intense and uniform factor continuing to threaten the Okaloosa darter. A report (Rainer *et al.* 2005, pp. 3–13) identified the following primary sources of sediment to aquatic ecosystems on Eglin AFB: accelerated streamside erosion, borrow pits, developed areas, land test areas, silviculture, and roads. Of these, the stream crossings of unpaved roads and subsequent bank erosion probably have the greatest impact because of their distribution on Eglin AFB, relative permanence as base infrastructure, and long-term soil disturbance characteristics. The largest remaining source of sediment input to darter streams is the unpaved road network. As of 2005, 87 percent (4,348 km or 2,701.7 mi) of Eglin's road network was unpaved.

As of 2010, Eglin AFB had completed about 95 percent of the erosion control projects identified in darter watersheds, substantially reducing runoff and sedimentation within the road network (USAF 2006, pp. 3–5; Pizzolato 2010, pers. comm.). From 1995 to 2004, 317 borrow pits and non-point erosion sites (485 ac) were rehabilitated and maintained. Although most of the erosion control projects have already been completed, Eglin has a continuing objective of identifying and rehabilitating an additional 150 soil erosion sites beyond the 317 sites that have already been restored. These soil erosion sites have the potential to impact endangered and threatened species like the listed Okaloosa darter. These remaining soil erosion sites pose a continuing threat to the darter and its habitat. For example, five road crossings in the Turkey Creek drainage have repeatedly exceeded State water quality standards for turbidity. Recent funding has been secured to replace or eliminate the remaining road-stream crossings identified as impairing waterways within the range of the Okaloosa darter on Eglin AFB. These projects are currently being designed or awaiting permits, and all are scheduled for construction in 2011.

Of the 153 road crossings that previously existed in Okaloosa darter drainages, 57 have been eliminated: 28 in Boggy Bayou streams, and 29 in Rocky Bayou streams. Eglin AFB estimates that these and other restoration efforts have reduced soil loss from roughly 69,000 tons per year in darter watersheds in 1994, to approximately 2,500 tons per year in 2010 (Pizzolato 2010, pers. comm.).

Borrow pits were a major source of sediment loading to darter streams cited in the 1998 darter recovery plan. At that time, 29 of 39 borrow pits located within or immediately adjacent to Okaloosa darter drainages had been restored so that they no longer posed sedimentation threats. As of 2004, all of the remaining borrow pits within Okaloosa darter drainages have been restored and no longer pose sedimentation threats (Rainer *et al.* 2005, pp. 3–18).

While sedimentation and erosion problems still exist on Eglin AFB, they have been significantly reduced through improvements such as bottomless culverts, bridges over streams, and bank restoration and revegetation. There are other areas where sedimentation remains a higher magnitude threat to the continued existence of the Okaloosa darter. Primarily in the downstream-most portion of the darter's range, urban development and construction activity pose a threat to the darter due to poor stormwater runoff control and ineffective pollution prevention measures that degrade habitat and may pose potential barriers to movement between basins. This threat is present primarily in the 5 km (3.1 mi) of historic habitat located outside of Eglin AFB. With improvement and reduction of sediment erosion on Eglin AFB (98.7 percent of the darter's current range), we believe that we can continue to work with off-base partners in recovery efforts that will enable delisting of this fish.

Road Development Projects

Additionally, road development projects present new potential threats that may negatively impact the Okaloosa darter. The Northwest Florida Transportation Corridor Authority has proposed a new, high-speed, toll bypass road that crosses Eglin AFB, extending from U.S. 331 in Walton County to SR 87 in Santa Rosa County. It includes the MBBA's Mid-Bay Bridge Connector Road, a new road from the northern terminus of the Mid-Bay Bridge to SR 85 north of Niceville. In addition, the Florida Department of Transportation is planning a capacity improvement project to expand SR 123 from two to four lanes across Toms and Turkey creeks. However, the roads would not prevent implementation of management actions for the Okaloosa darter in Eglin AFB's INRMP, which will continue to provide a benefit to the darter.

Eglin AFB has granted the MBBA conceptual agreement for the Mid-Bay Bridge Connector Road, and construction of Phase I of the project has begun. Although the remaining phases of the project cross darter drainages, the agreement includes 19 stipulations that will minimize impacts to darter drainages. For example, the project will use environmentally-sensitive bridge construction techniques, and conservation measures that minimize erosion and ground disturbance at each stream crossing and that maintain stream channel stability. By designing the bridges to maintain natural stream geomorphology, and with the use of appropriate methods to stabilize stream banks and erosion control measures along the stream, we do not anticipate long-term erosion and degradation of darter habitat.

The project also includes specific stream restoration projects to improve currently degraded habitat conditions in Okaloosa darter basins including Mill Creek, Swift Creek, East Turkey Creek, Turkey Creek, and Toms Creek. Importantly, the potential secondary and cumulative effects of a new roadway, including threats to Okaloosa darter from new development, will be addressed through discussions with private property owners regarding easements and agreements to protect floodplain and riparian habitat and reduce threats along Okaloosa darter streams.

We recently completed consultation under the Act on this project and found that the proposed Mid-Bay Bridge Connector Road is not likely to jeopardize the continued existence of the Okaloosa darter. Most direct and indirect effects will occur within the 122-meter (400-foot) study corridor and are considered temporary and reversible. Given the specific extensive conservation measures included in the project, we do not consider the Mid-Bay Bridge Connector Road to be a significant threat to Okaloosa darters. As plans progress for the other road projects, the applicants will need to consult with the Service under section 7 of the Act to avoid and minimize impacts to the Okaloosa darter and other federally protected species, and assure that the species' continued existence and recovery is not jeopardized.

Elgin AFB and Its Programs

Eglin AFB is a military training facility and is divided into 37 land test areas where weapons testing and training operations are conducted, 12 of which are wholly or partially within darter drainages (SAIC 2001, pp. 2 and 7). Eglin AFB maintains large portions of the test areas in an early stage of plant succession with few mature trees and varying degrees of soil disturbance as a result of maintenance or military missions. Since 1998, only one section 7 consultation with Eglin AFB (related to test area activities) has resulted in the issuance of an incidental take statement.

There is a proposal to increase the military personnel and use at Eglin AFB through the 2005 Defense Base Realignment and Closure (BRAC). The BRAC action involves establishing the Joint Strike Fighter Integrated Training Center and relocating the Army 7th Special Forces Group (Airborne) to Eglin AFB, increasing the number of personnel present on base, the number of test ranges, and the frequency of test area activities. The Service has provided preliminary comments on the military's Notice of Intent to Prepare an Environmental Impact Statement under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and completed a formal consultation for other species but not the Okaloosa darter. We do not anticipate any increase in threats to the Okaloosa darter from this action, as the new ranges have been moved outside of Okaloosa darter habitat and Eglin AFB has agreed to provide a 300-ft. buffer along all darter streams when conducting any troop maneuvers.

While poorly designed silvicultural programs can result in accelerated soil erosion and stream sedimentation, Eglin AFB has designed its silviculture program within darter habitat to avoid and minimize impacts to the aquatic ecosystems such that the program is not likely to adversely affect the Okaloosa darter.

Pollution

Pollution other than sedimentation poses a potential threat to darters in six stream segments. While no streams in the darter's range are designated by DEP as impaired, 6 of the 13 segments sampled using three biological indicators were considered potentially impaired and are on the "3c planning list," which means that "enough data and information are present to determine that one or more designated uses may not be attained according to the Planning List methodology." One stream site has been characterized as "severely limited by pollutants from the landfill."

Using comparable aquatic insect sampling methods, the Service (Thom and Herod 2005, Table 4–1) found 12 out of the 42 sites sampled within the darter's range to be impaired. An impaired water body is one where the biological integrity of the system as determined through indicators has been compromised because of pollutants, indicating that Okaloosa darter habitat is degraded. Based on these data, it appears likely that the wastewater treatment sprayfields located near the headwaters of East Turkey Creek and Swift Creek are adversely affecting water quality. Although water quality issues associated with the Niceville landfill and sprayfield continue to threaten the darter, they are being examined in a research project.

Water Withdrawals

Water withdrawals for human consumption in and around the range of the Okaloosa darter are presently served by wells that tap the Floridan Aquifer, which is declining substantially in the most populated areas near the coast. However, at this time, there is no evidence that pumping from the Floridan Aquifer has reduced flows in darter streams. The darter drainages are spring-fed from a shallow sand and gravel aquifer that is not used for human consumption. Additionally, the low permeability of the Pensacola Clay confining bed probably severely limits hydraulic connectivity between the two aquifers (Fisher *et al.* 1994, p. 86). Therefore, we do not anticipate that local population growth would adversely affect water flows in the darter's drainages.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2007a, p. 30). Numerous long-term changes have been observed including changes in arctic temperatures and ice, and widespread changes in precipitation amounts, ocean salinity, wind patterns, and aspects of extreme weather including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones (IPCC 2007b, p. 7). While continued change is certain, the magnitude and rate of change is unknown in many cases.

The currently occupied range of the darter is restricted to approximately 402 km (249.8 mi) of streams in Walton and Okaloosa Counties, Florida. While we acknowledge the general scientific consensus that global scale increases in temperatures have occurred, we do not have sufficient data to determine that climate change poses a significant threat to the Okaloosa darter. Streams within the Okaloosa darter's range are spring-fed, and thus many are thermally moderated. However, thermal mediation varies considerably among nearby Okaloosa darter streams (Jordan 2010, pers. comm.), and some streams that support Okaloosa darters may be affected by increases in air temperature. We lack the data to evaluate whether increased temperatures in some streams will adversely affect Okaloosa darters. The information currently available on the effects of climate change and the available climate change models do not make sufficiently accurate estimates of location and magnitude of effects at a scale small enough to apply to the range of the Okaloosa darter. At present, we have insufficient data to determine that climate changes observed to date have had any adverse impact on the Okaloosa darter or its habitat.

Summary of Factor A

About 51,397 hectares (127,000 acres), or 457 square kilometers (176 square miles), of the darter's drainage basins (90 percent) are managed by Eglin AFB, while 485.6 hectares or 12,000 acres (10 percent) of the drainage basins are situated within the Niceville-Valparaiso urban complex. Urban runoff continues to degrade darter habitat in 1.3 percent of the linear stream distance that occurs outside of Eglin AFB through pollution and sedimentation. Additionally, there is a continued threat of further development in the darter's drainages outside of Elgin AFB.

The military mission or mandate of Eglin AFB, which holds 98.7 percent of the darter's current range and 90 percent of the drainage basins for the darter, will lead to foreseeable actions that could impact the darter's range. Potential impacts resulting from a road development project within the darter's range have been minimized, and that project is not considered a significant threat to the species. However, the growing coastline human population in Florida that is pressing into the boundaries of Eglin AFB will have foreseeable needs that could cross Eglin AFB's boundaries and impact the darter's range.

Stream sedimentation and erosion control problems still exist on Eglin AFB, and we will continue to cooperatively work with our partner to resolve these. Habitat restoration efforts completed on the base to date have reduced 95 percent of the sedimentation into streams occupied by the Okaloosa darter, nearly eliminating the largest threat to the species.

At present, we do not have data to indicate that climate change poses a significant threat to the Okaloosa darter.

Okaloosa darter populations are stable or increasing in the majority of the species' range. The current rangewide population is estimated at 802,668 darters with an estimated 625,279 mature individuals (Service 2007, Table 2). Therefore, we believe the rangewide threat of habitat destruction, modification, or fragmentation over this large area from sources like sedimentation and pollution has been reduced to a point where the Okaloosa darter no longer meets the definition of an endangered species. We find that the present or threatened destruction, modification, or curtailment of its habitat or range is not likely to place the Okaloosa darter in danger of extinction throughout all or a significant portion of its range. However, although the threats under this factor have been reduced, they have not been entirely eliminated. Accordingly we find that the Okaloosa darter meets the definition of a threatened species because it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes is not, nor has it ever been, a significant threat to the Okaloosa darter anywhere within the species' range. Any utilization for recreational purposes is limited to the occasional mistaken use as a bait fish. Therefore, we find that this factor is not likely to cause the Okaloosa darter to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We do not have any data to suggest that this threat will increase in any portion of the darter's range now or within the foreseeable future.

Factor C. Disease or Predation

Neither disease nor predation is considered a threat to the Okaloosa darter. The six basins of the darter's range are relatively free of introduced aquatic predators, and the native predators, such as the largemouth bass, are relatively low in numbers due to the generally low productivity of the groundwater-fed streams. We have no indications that terrestrial predation is a problem. It is possible that diseases or parasites were indirectly associated with the extirpation of the darter from various stream segments as a result of physical or chemical habitat degradation. However, apart from this potential association, we do not otherwise suspect that disease or predation unduly limits the distribution or abundance of the darter. Therefore, we find that this factor is not likely to cause the Okaloosa darter to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We do not have any data to suggest that this threat will increase in any portion of the darter's range now or within the foreseeable future; however, vigilance for nonindigenous predators is needed as potential introductions of flathead catfish or cichlids might prove to be problems for the Okaloosa darter in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Act requires that any State, local, and private project outside of Eglin AFB that uses Federal funds or requires a Federal permit must undergo section 7 consultation to ensure that the species is not jeopardized. In addition, the State of Florida has listed the Okaloosa darter as an endangered species under its protected species statute since 1976. Recently, the FWC incorporated the IUCN Red List Criteria (*http://www.iucnredlist.org*) in its procedures for classifying species (Florida Administrative Code 68A–27.0012), but the FWC has not yet evaluated the Okaloosa darter using the new procedures (Knight 2010, pers. comm.). Our application of the Red List Criteria classifies the darter as "near threatened" (Service 2007, p. 43).

In addition, land management on DOD lands is governed by the Sikes Act (16 U.S.C. 670 *et seq.*) and the Sikes Improvement Act, which provide for the conservation and rehabilitation of natural resources and require DOD to periodically prepare an INRMP in consultation with the Service and the applicable State wildlife agency. Because the Okaloosa darter's current range occurs almost exclusively on Eglin AFB, the species is afforded considerable protections from large-scale habitat disturbance. Its habitat is further conserved and rehabilitated, through fish and wildlife and land management actions, consistent with the use of the military installation, as required by the Sikes Act, as amended by the Sikes Act Improvement Act. Federal actions must also comply with the National Environmental Policy Act, the CWA, and applicable State laws. These laws also help with avoiding or minimizing impacts to the Okaloosa darter and its habitat.

Department of Defense Instruction (DODI) 4715.3, Environmental Conservation Program, is the overarching instruction for DOD natural and cultural resources management, and is the primary agent for implementing policy (including the Sikes Act), assigning responsibility, and prescribing procedures for the integrated management of natural and cultural resources on DOD properties. In compliance with these programs, Eglin AFB has taken a proactive role in the recovery of the Okaloosa darter by managing its lands to provide for the recovery of the darter and assuring that the species' recovery is integrated with the military training purposes of the base.

Air Force Policy Directive (AFPD) 32–70, Environmental Quality, establishes policy to responsibly manage natural and cultural resources on Air Force properties, clean up past environmental damage, meet current environmental standards, plan future activities to minimize impacts, and eliminate pollution from Air Force activities whenever possible. Under this Directive, an Air Force Environmental Quality Program was developed. This program includes the following activities: Cleanup, compliance, conservation, and pollution prevention. Additionally, this directive states that the Air Force will pursue adequate funding to meet environmental legal obligations. Compliance with this directive has resulted in funding and implementation of considerable erosion control measures and fish barrier removals, which have significantly reduced runoff and sedimentation in Okaloosa darter streams and expanded the range of the species.

Air Force Instruction (AFI) 32–7064, Integrated Natural Resources Management, implements AFPD 32–70 and DODI 4715.3. This instruction provides details on how to manage natural resources on Air Force installations to comply with applicable Federal, State, and local laws and regulations. The current INRMP and Threatened and Endangered Species Component Plan for Eglin AFB identify management practices to benefit the Okaloosa darter. The purpose of the INRMP for Eglin AFB is to provide interdisciplinary strategic guidance for the management of the base's natural resources, while the primary objective of the Air Force Natural Resources Program is to ensure continued access to land and air space required to accomplish the Air Force mission while maintaining these resources in a healthy condition. The INRMP for Eglin AFB facilitates compliance with Federal,

State, and local environmental requirements. These requirements deal with analysis of: Potential environmental impacts, water and air quality, wetlands, endangered species, marine mammals, migratory birds, other wildlife, forest and fire management, and public access and recreation. The INRMP and Threatened and Endangered Species Component Plan also identify conservation objectives for the Okaloosa darter as described under Downlisting Criterion 1 under item (2) in the Recovery section above.

Summary of Factor D

We estimate that 98.7 percent of the darter's current range is within the boundaries of Eglin AFB; the remaining 1.3 percent of the range is downstream of Eglin AFB. For this reason, almost all human activities that may affect the existing darter population are Federal actions, including actions implemented, funded, or approved by the DOD. The INRMP prepared for Eglin AFB under the Sikes Act and Sikes Improvement Act requires habitat improvements that will continue to benefit the darter. Federal actions must also comply with the National Environmental Policy Act, the CWA, and applicable State laws. These regulatory mechanisms will remain in place when the Okaloosa darter is downlisted to threatened. Therefore, the existing regulatory mechanisms are substantial, and they will be adequate to protect the darter and its habitat in the majority of its range now and within the foreseeable future. We do not have any data to suggest that this threat will increase in any portion of the darter's range now or within the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting The Species' Continued Existence

Okaloosa darters were not adversely affected by the active hurricane and storm seasons of 2004 and 2005, which brought numerous severe storm events to the southern boundaries of Eglin AFB (Jordan and Jelks 2009, p. 9). Darter numbers declined slightly during the recent 2007–2008 drought affecting much of Florida; however survey data from previous droughts suggest resilience to these events with elevated recruitment during wet years (Jordan and Jelks 2009, p. 2).

Two natural factors are identified in the recovery plan as possibly affecting the Okaloosa darter: the brown darter as an introduced competitor species, and the beaver as an agent adversely modifying darter habitat.

Brown Darter

In 1964, a potential competitor of the Okaloosa darter, the brown darter (*Etheostoma edwini*), was found in the lower reaches of Swift Creek. The brown darter is a widespread species in drainages that surround the streams containing the Okaloosa darter, but had not previously been documented in any Okaloosa darter drainages. Early indications were that the brown darter may have been introduced into Okaloosa darter drainages from releases from bait buckets by fishermen or by incidental stocking with game fish from fish hatcheries (Burkhead *et al.* 1992, pp. 23–30). Others thought that brown darters dispersed from Eagle Creek along the shoreline of Choctawhatchee Bay and were simply overlooked in early collections (Jelks 2010, pers. comm.). Recent genetics analyses of the brown darter shows high genetic structure, and little support for introductions from eastern Florida (Austin 2007, pers. comm.), supporting the theory that they were overlooked in early collections.

Although annual monitoring (1995–2004) of Okaloosa and brown darter populations shows a weak negative correlation between the abundance of the two species, the relative abundance of Okaloosa darters at sites where both species occur has generally increased or remained constant in this timeframe, and the range of the brown darter has not expanded (Jordan and Jelks 2004, p. 3). Earlier comparisons of microhabitat use found little evidence of competitive displacement (Burkhead *et al.* 1994, p. 60). Therefore, at this time, we do not believe the brown darter is an introduced species or that it poses a significant threat to the recovery of the Okaloosa darter because it has not been shown to impair Okaloosa darter populations.

Beavers

Okaloosa darters do not appear to tolerate impounded conditions and are generally absent in the relatively still water upstream of manmade dams, beaver dams, culverts, and other instream obstructions that act like dams. Jordan and Jelks (2004, p. 29) observed the effects of a beaver dam and a culvert at two locations on Rogue Creek that supported Okaloosa darters before these structures were placed in the stream. Both structures had similar effects on darters and important darter habitat features, including increased water temperature, accumulation of flocculent substrate, loss of typical microhabitat features, and virtual elimination of darters in the impounded areas. However, Jordan and Jelks (2004, p. 29) also observed that darters returned to these locations within a year following removal of the beaver dam and the culvert, the former by Eglin AFB resource managers and the latter by a hurricane.

Because beavers often alter areas in a manner contrary to human intentions for those areas, and also because beaver ponds displace Okaloosa darter habitat, resource managers, with the assistance of the U.S. Department of Agriculture's Wildlife Services, control beaver numbers in some areas on Eglin AFB (USAF 2007, pp. 1–6). Although a nuisance in the urban environment, beavers are a natural feature of the landscape in the range of the Okaloosa darter. It is possible that impacts from beavers may be more pronounced than they were historically given that the natural predators of beavers may be greatly reduced. Beaver dams are also problematic when they are constructed upstream of poorly designed river crossings and culverts because they result in more permanent impoundments.

While the waters impounded behind a beaver dam do not support Okaloosa darters, darter densities in "beaver meadows" were among the highest observed in monitoring surveys. Beaver meadows occur in the vicinity of beaver ponds where the dam and pond induces the stream to assume a braided (multi-channel) form, sometimes in the pond itself following dam blowout or removal. Floodplain trees are killed by the year-round high water level maintained near the pond and by the beavers themselves, and herbaceous vegetation thrives in the resulting open canopy, which apparently creates favorable habitat conditions for the darter as aquatic macrophytes thrive under the open canopy and in higher nutrient substrates. We suspect that a beaver meadow supports as many or more darters than were displaced from the beaver pond itself.

Beaver dams are not permanent structures and may be broken by the high flows associated with hurricanes and other major storm events. The organic matter that accumulates in a beaver pond is suddenly released when the dam blows out, which provides a pulse of nutrients in the otherwise nutrient-poor darter streams. The pond is gone immediately, of course, and over time the braided channel through the beaver meadow returns to a single channel form. This channel is eventually shaded by riparian trees and shrubs, and the concentrated patch of darter habitat that the meadow provided is also gone. Given the balance of the

effects beavers have on their habitats, we do not know at this time whether their numbers pose a threat to Okaloosa darters. However, even if they do pose localized impacts, we do not believe these to be significant to the Okaloosa darter rangewide.

Summary of Factor E

Okaloosa darters appear not to be affected by hurricanes and seem to be resilient to droughts. While brown darters may not impact the Okaloosa darter and beavers may pose only localized impacts, there is no evidence indicating that these impacts are significantly affecting the species on a rangewide or population level. Therefore, we find that this factor is not likely to cause the Okaloosa darter to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We do not have any data to suggest that this threat will increase in any portion of the darter's range now or within the foreseeable future.

Conclusion of the 5-Factor Analysis

In developing this rule, we have carefully assessed the best scientific and commercial data available regarding the threats facing this species, as well as the ongoing conservation efforts.

Under section 3 of the Act, a species is "endangered" if it is in danger of extinction throughout all or a significant portion of its range and is "threatened" if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. For the purposes of this rule, the word "range" refers to the range in which the species currently exists, and the word "significant" refers to the value of that portion of the range being considered to the conservation of the species. The "foreseeable future" is the period of time over which events or effects reasonably can or should be anticipated, or trends extrapolated.

As identified above, only one of the five listing factors currently poses a known threat to the Okaloosa darter, namely, Factor A—the present or threatened destruction, modification, or curtailment of its habitat or range. Eglin AFB manages the vast majority of the Okaloosa darter's current range, 98.7 percent. We have seen substantial progress on Eglin AFB addressing threats to the darter's habitat under the base's INRMP and general ongoing habitat restoration. Resource stewardship on Eglin AFB is generally reducing the threat of habitat destruction and range reduction (for example, restoring erosive, near-stream borrow pits). Eglin AFB is addressing the threat of sedimentation from unpaved roads and from areas adjacent to poorly designed and maintained paved roads. Similarly, restoration of Mill Creek on the Eglin Golf Course, which had been substantially altered by culverts and manmade impoundments, has been completed. As the smallest of the six darter watersheds, the darter population in Mill Creek is probably most vulnerable to extirpation. We anticipate that restoration at Mill Creek will secure a viable population in this system. Eglin has worked diligently to generally improve habitat quality within its boundaries. Outside of Eglin's borders, we have been working with the City of Niceville to improve their wastewater collection system and install more appropriate culverts at a number of road crossings. However, additional improvements are necessary before this threat of sedimentation and pollution is completely removed.

Brown darters and habitat loss from beaver activity were identified as other natural and manmade factors affecting the continued existence of darters. After several years of monitoring and recent genetics work, it does not appear that the brown darter is either expanding its range or displacing Okaloosa darters in most sympatric areas. The overall effect of beaver activity on the darter is poorly understood. However, even if brown darters and habitat loss from beaver activity do pose localized threats, we do not believe these to be significant to the Okaloosa darter rangewide.

The 1998 Recovery Plan for the Okaloosa darter identifies five downlisting criteria. We believe that the intent of all five of the downlisting criteria have been fulfilled; however, the delisting criteria have not been met at this time. Specifically, while significantly reduced, sedimentation and pollution, as well as development, remain a threat in portions of the darter's range.

Based on the analysis above and given the substantial reduction in threats to its habitat, the Okaloosa darter does not currently meet the definition of endangered in that it is not "in danger of extinction throughout all or a significant portion of its range." Instead, it meets the definition of threatened in that it is "likely to become endangered in the foreseeable future throughout all or a significant portion of its range." Actions still needed for the Okaloosa darter to continue to recover (for example, actions to remove threats to the point that the species no longer meets the definition of threatened) include:

(1) Cooperative agreements to protect and restore habitat, water quality, and water quantity for the Okaloosa darter outside of Eglin AFB to protect the species in the foreseeable future; and

(2) Improved and maintained water quality and riparian habitat on Eglin AFB, minimizing erosion at clay pits, road crossings, and steep slopes to the extent that resembles historic, predisturbance conditions.

Significant Portion of the Range

Having determined that the Okaloosa darter is no longer endangered throughout its range as a consequence of the threats evaluated under the five factors in the Act, we must next consider whether there are any significant portions of its range where the species is currently endangered. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is endangered in a significant portion of its range is to identify any portions of the range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are not significant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is

not significant, the Service need not determine whether the species is endangered there. Conversely, if the Service determines that the species is not endangered in a portion of its range, the Service need not determine if that portion is significant.

The threats identified above are fairly uniform throughout the range of the Okaloosa darter. In a small percentage of the range that occurs outside the Eglin AFB (10 percent of the drainage area, and 1.3 percent of the instream habitat), the threat of urbanization is more pronounced. However, this is a small portion of the total range of the species, is similar to the rest of the species' habitat, and does not appear in other ways to have a significant impact on the overall status of the species. Therefore, we have determined that there are no portions of the range that qualify as a significant portion of the range in which the darter is in danger of extinction.

In summary, the threats to Okaloosa darter habitat have been significantly reduced as a result of Eglin AFB implementing habitat improvement measures on the AFB's lands. Okaloosa darter populations remain stable throughout most of their range, and have even expanded their range in some areas. Based on the darter's improved status throughout its range and the reduction in threats, we have determined that none of the threats result in the darter being in danger of extinction throughout all or a significant portion of its range. However, certain threats to the darter and its habitat remain. We have determined that, based on the status of the species and these remaining threats, the Okaloosa darter meets the definition of threatened in that it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, we are reclassifying the darter's status from endangered to threatened under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the Okaloosa darter, and promotes conservation actions by Federal, State, and local agencies; private organizations; and individuals. The Act provides for possible land acquisition and cooperation with the State, and provides for recovery planning and implementation. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to the Okaloosa darter. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect the Okaloosa darter or its habitat, the responsible Federal agency must consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the Okaloosa darter. Federal agency actions that may require consultation include: Eglin AFB mission activities, new construction, culvert replacements, stream restoration, sediment control projects, vegetation control, and right-of-way permitting for pipelines and cables; U.S. Army Corps of Engineers involvement in projects such as dredge-and-fill permits for roads, bridges, and culverts; and Federal Highway Administration road projects.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, codified at 50 CFR 17.21 and 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harm, harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to Service agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. Regulations governing permits are codified at 50 CFR part 13 and at 50 CFR 17.32 for threatened wildlife species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Because the Okaloosa darter's extant range occurs almost exclusively on Eglin AFB, the species is afforded considerable protections from large-scale habitat disturbance. Those protections have already been discussed under Factor D. above, and are added here by reference.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act and applicable regulations should be directed to Don Imm, Field Supervisor, Panama City Field Office (*see* **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345; telephone (404) 679–7313; facsimile (404) 679–7081.

Special Rule

The information presented above generally applies to threatened species of fish and wildlife. However, the Service has the discretion under section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for the conservation of the species. Threatened species implementing regulations at 50 CFR 17.31 incorporate the prohibitions of section 9 of the Act for endangered species, except when a "special rule" is promulgated under section 4(d) of the Act for a particular threatened species. A special rule for a particular threatened species defines the specific take prohibitions and exceptions that apply for that species rather than incorporating all of the prohibitions of section 9 of the Act. The prohibitions under section 9 of the Act currently make it illegal to import, export, take, possess, deliver, receive, carry, transport, ship in interstate commerce, or sell or offer for sale in interstate or foreign commerce species listed under the Act. Take, as defined in section 3 of the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Threatened species that have special rules under section 4(d) of the Act are listed in our regulations at 50 CFR 17.40 through 17.48.

Because we originally listed the Okaloosa darter as endangered, we did not promulgate a special rule. However, now that we are reclassifying the darter to threatened status, a special rule is appropriate to provide for the continued conservation of the species. Therefore, a special rule is included as part of this reclassification from endangered to threatened status.

Although the range of the species is small, it is almost entirely (98.7 percent) on Eglin AFB Federal lands. Darter drainages comprise 24 percent of Eglin

AFB, subjecting almost all actions undertaken on 24 percent of the base to the interagency cooperation requirements of section 7 of the Act, including habitat management and restoration specifically targeted at darter conservation and as required by the Sikes Act and Sikes Improvement Act through the Eglin INRMP. This special rule:

(1) Recognizes the positive recovery efforts and accomplishments of Eglin AFB and the DOD in recovering the Okaloosa darter to the extent that the darter no longer meets the definition of endangered;

(2) Provides increased regulatory and mission flexibility for Eglin AFB;

(3) Helps streamline or eliminate review and permitting requirements for habitat management and restoration activities, thus providing a net benefit to the Okaloosa darter; and

(4) Enables the Service and Eglin AFB to better target limited resources to other, more vulnerable areas or species.

Therefore, under section 4(d) of the Act, we determine, through this special rule, that it is necessary and advisable to provide for the conservation of the Okaloosa darter by allowing the take in accordance with applicable Federal, State, and local laws, during the following activities on Eglin AFB that are consistent with a Service-approved INRMP and the Threatened and Endangered Species Component Plan:

(1) Prescribed fire for land management to promote a healthy ecosystem;

(2) Instream habitat restoration;

(3) Unpaved range road stabilization;

(4) Removal or replacement of culverts for the purpose of road decommissioning, improving fish passage, or enhancing stream habitat; and

(5) Scientific research and monitoring activities consistent with an approved Okaloosa darter recovery plan, or otherwise approved by the Service, both on and off of Eglin AFB.

All other activities resulting in take of Okaloosa darter remain prohibited.

This special rule provides for the continued conservation of Okaloosa darter by reducing the regulatory burden under the Act, and thereby encouraging further recovery efforts on DOD lands. Minor adverse impacts to the Okaloosa darter that are consistent with provisions of this final 4(d) special rule will not appreciably diminish the likelihood of recovery of the Okaloosa darter.

Effects of This Rule

This rule will revise our regulations at 50 CFR 17.11(h) to reclassify the Okaloosa darter from endangered to threatened throughout its range on the Federal List of Endangered and Threatened Wildlife. This rule formally recognizes that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. However, this reclassification does not significantly change the protection afforded this species under the Act. The regulatory protections of section 9 and section 7 of the Act remain in place. Anyone taking, attempting to take, or otherwise possessing an Okaloosa darter, or parts thereof, in violation of section 9 of the Act is still subject to a penalty under section 11 of the Act, unless their action is covered under a special rule under section 4(d) of the Act. Under section 7 of the Act, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Okaloosa darter.

Recovery actions directed at the darter will continue to be implemented as outlined in the recovery plan for the Okaloosa darter (Service 1998), including:

(1) Restoring and protecting habitat in the six Okaloosa darter stream watersheds;

(2) Protecting water quality and quantity in the six Okaloosa darter streams;

(3) Monitoring and annually assessing populations and habitat conditions of Okaloosa and brown darters, and water quality and quantity in the streams; and

(4) Establishing a public information and education program and evaluating its effectiveness.

Required Determinations

Section 7 Consultation

A special rule under section 4(d) of the Act is included in this downlisting rule. The Service is not required to consult on this rule under section 7(a)(2) of the Act. The development of protective regulations for a threatened species are an inherent part of the section 4 listing process. The Service must make this determination considering only the "best scientific and commercial data available." A necessary part of this listing decision is also determining what protective regulations are "necessary and advisable to provide for the conservation of [the] species." Determining what prohibitions and authorizations are necessary to conserve the species, like the listing determination of whether the species meets the definition of endangered or threatened, is not a decision that Congress intended to undergo section 7 consultation.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of the references used to develop this rule is available upon request from Don Imm, Field Supervisor, Panama City Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this document is Karen Herrington of the Panama City Field Office (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and Threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

We 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; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for "Darter, Okaloosa" under "FISHES" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES	.....	.....	.....		.....	.....	.....
*	*	*	*	*	*		*
Darter, Okaloosa	*Etheostoma okaloosae*.	U.S.A. (FL)	Entire	T	6, 787	NA	17.44(bb)
*	*	*	*	*	*		*

■ 3. Amend § 17.44 by adding a paragraph (bb) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(bb) Okaloosa darter (*Etheostoma okaloosae*).

(1) Except as noted in paragraphs (bb)(2) and (bb)(3) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 apply to the Okaloosa darter.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any Okaloosa darters taken in violation of this section or in violation of applicable State fish and wildlife conservation laws or regulations.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense listed in this special rule.

(2) The following activities, which may result in incidental take of the Okaloosa darter, are allowed on Eglin Air Force Base (AFB), provided that the activities occur in accordance with applicable Federal, State, and local laws, and are consistent with a Service-approved Integrated Natural Resources Management Plan by Eglin AFB and with Eglin AFB's Threatened and Endangered Species Component Plan:

(i) Prescribed fire for land management to promote a healthy ecosystem;

(ii) Instream habitat restoration;

(iii) Unpaved range road stabilization; and

(iv) Removal or replacement of culverts for the purpose of road decommissioning, improving fish passage, or enhancing stream habitat.

(3) Scientific research and monitoring activities that may result in incidental take of the Okaloosa darter are allowed, provided these activities are consistent with a Service-approved Okaloosa darter recovery plan, or otherwise approved by the Service, whether those activities occur on or off of Eglin AFB.

(4) Take caused by any activities not listed in paragraph (bb)(2) and (bb)(3) of this section is prohibited.

Dated: March 21, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–7668 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 76, No. 63
Friday, April 1, 2011

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

DEPARTMENT OF LABOR

5 CFR Chapter XLII

20 CFR Chapters IV, V, VI, VII, and IX

29 CFR Subtitle A and Chapters II, IV, V, XVII, and XXV

30 CFR Chapter I

41 CFR Chapters 50, 60, and 61

48 CFR Chapter 29

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Office of the Secretary, Labor.

ACTION: Request for Information; Extension of Comment Period.

SUMMARY: On March 21, 2011, the Department of Labor (DOL or the Department) published a Request for Information (RFI) in response to the President's Executive Order 13563 on improving regulation and regulatory review. The RFI invited public comment on how the Department can improve any of its significant regulations by modifying, streamlining, expanding, or repealing them. This extension gives commenters an additional 8 days to comment on the RFI.

DATES: The comment period for the Request for Information published on March 21, 2011, at 76 FR 15224, is extended. Comments must be received on or before April 8, 2011.

ADDRESSES: You may submit comments through the Department's Regulations Portal at *http://www.dol.gov/regulations/regreview.htm.*

All comments will be available for public inspection at *http://www.dol.gov/regulations/regreview.htm.*

FOR FURTHER INFORMATION CONTACT:

E. Christi Cunningham, Associate Assistant Secretary for Regulatory Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2312, Washington, DC 20210, *cunningham.christi@dol.gov,* (202) 693–5959 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: On January 18, 2011, President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review." The Order explains the Administration's goal of creating a regulatory system that protects "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation" while using "the best, most innovative, and least burdensome tools to achieve regulatory ends." The Executive Order requires agencies to develop and submit a preliminary plan within 120 days from the January 18 issuance date that explains how each agency will review existing significant regulations to identify whether any regulations may be made more effective or less burdensome.

Request for Comments

As a first step in developing its regulatory review plan, the Department is requesting public comment on how the Department can increase the effectiveness of its significant regulations while minimizing the burden on regulated entities. The Department recognizes the knowledge of programs and their implementing regulations that exists within our regulated communities, academia and the public, and therefore is requesting public comment on how the Department can foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights in ways that are more effective and less burdensome.

This request for public input will inform development of the Department's plan to review its existing significant regulations. To facilitate receipt of the information, the Department has created an Internet portal specifically designed to capture your input and suggestions, *http://www.dol.gov/regulations/regreview.htm.* The portal contains a series of questions designed to gather information on how DOL can best meet the requirements of the Executive Order. The portal will be open to receive comments from March 16, 2011 through April 8, 2011.

Questions for the Public

The Department intends the questions on the portal to represent a starting point for discussion of the criteria that can be used to prioritize its regulatory review. The questions are meant to initiate public dialogue, and are not intended to restrict the issues that may be raised or addressed. The questions were developed with the intent to probe a range of areas, including tools that can be used to prioritize regulations for review; strategies that can be used to increase flexibility of regulations; and ensuring scientific integrity of data. Please note that these questions do not pertain to DOL rulemakings currently open for public comment. To comment on an open rulemaking, please visit regulations.gov and submit comments by the deadline indicated in that rulemaking.

When addressing these questions, the Department requests that commenters identify with specificity the regulation or reporting requirement at issue, providing legal citation(s) where available. The Department also requests that submitters provide, in as much detail as possible, an explanation of why a regulation or reporting requirement should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the Department can better achieve its regulatory objectives. Whenever possible, please provide empirical evidence and data to support your response.

The Department will consider public comment as we develop this plan to periodically review the Department's significant rules. The Department is issuing this request solely to seek useful information as it develops its review plan. While responses to this request do not bind the Department to any further actions related to the response, all submissions will be made available to the public on *http://www.dol.gov/regulations/regreview.htm.*

Authority: E.O. 13653, 76 FR 3821, Jan. 21, 2011; E.O. 12866, 58 FR 51735, Oct. 4, 1993.

William E. Spriggs,

Assistant Secretary for Policy.

[FR Doc. 2011–7745 Filed 3–31–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0004]

RIN 1904–AB94

Energy Conservation Program for Consumer Products: Test Procedures for Residential Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE or the Department) proposes amendments to those it proposed to the DOE test procedures for residential central air conditioners and heat pumps released in a June 2010 notice of proposed rulemaking (June 2010 NOPR). The proposed amendments in this supplemental notice of proposed rulemaking (SNOPR) would change the off-mode laboratory test steps and calculation algorithm to determine off-mode power consumption for residential central air conditioners and heat pumps, as well as change the requirements for selection and metering of the low-voltage transformer used when testing coil-only residential central air conditioners and heat pumps. Additionally, the amendments proposed today provide a method of calculation to determine the energy efficiency ratio (EER) during cooling mode steady-state tests for use as a regional metric. Finally, today's notice proposes amendments that would combine the two seasonal off-mode ratings of *P1* and *P2* for residential central air conditioners and heat pumps, as set forth in the June 2010 NOPR, to yield a single overall rating, PW_{OFF}.

DATES: DOE will accept comments, data, and other information regarding this supplemental notice of proposed rulemaking (SNOPR) no later than May 2, 2011. *See* section 0, "Public Participation," of this SNOPR for details.

ADDRESSES: Interested parties may submit comments, identified by docket number EERE–2009–BT–TP–0004 or Regulation Identifier Number (RIN) 1904–AB94, by any of the following methods:

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

2. *E-mail: RCAC-HP-2009-TP-0004@ee.doe.gov.* Include the docket number EERE–2009–BT–TP–0004 and/or RIN 1904–AB94 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. Otherwise, please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies. Otherwise, please submit one signed paper original.

Instructions: No telefacsimilies (faxes) will be accepted. All submissions must include the docket number or RIN for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* section 0, "Public Participation," of this document.

Docket: The docket is available for review at www.regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/cac_heatpumps_new_rulemaking.html.* This Web page will contain a link to the docket for this notice on the Web site *http://www.regulations.gov.* The *http://www.regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket. *See* section 0, "Public Participation," for information on how to submit comments through regulations.gov.

For further information on how to submit or review public comments or view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Wes Anderson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7335. E-mail: *Wes.Anderson@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 287–6111. E-mail: *Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority and Background
  A. Authority
  B. Background
II. Summary of the Proposal
III. Discussion
  A. Test Methods and Calculations for Off-Mode Power and Energy Consumption of Residential Central Air Conditioners and Heat Pumps
  B. Selecting the Low-Voltage Transformer Used When Testing Coil-Only Central Air Conditioners and Heat Pumps and Required Metering of Low-Voltage Components During Off-Mode Test(s)
  C. Withdrawal of the Proposal To Add the New Regional Performance Metric SEER Hot-Dry
  D. Calculation of the Energy Efficiency Ratio for Cooling Mode Steady-State Tests
  E. Off-Mode Performance Ratings
IV. Procedural Issues and Regulatory Review
  A. Review Under Executive Order 12866
  B. Review Under the Regulatory Flexibility Act
  C. Review Under the Paperwork Reduction Act of 1995
  D. Review Under the National Environmental Policy Act of 1969
  E. Review Under Executive Order 13132
  F. Review Under Executive Order 12988
  G. Review Under the Unfunded Mandates Reform Act of 1995
  H. Review Under the Treasury and General Government Appropriations Act, 1999
  I. Review Under Executive Order 12630
  J. Review Under the Treasury and General Government Appropriations Act, 2001
  K. Review Under Executive Order 13211
  L. Review Under Section 32 of the Federal Energy Administration Act of 1974
V. Public Participation
  A. Submission of Comments
  B. Issues on Which DOE Seeks Comment
VI. Approval of the Office of the Secretary

I. Authority and Background

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including the residential central air conditioners and heat pumps with rated cooling capacities less than 65,000 British thermal units per hour (Btu/h) that are

the focus of this notice.[1] (42 U.S.C. 6291(1)–(2), (21) and 6292(a)(3))

Under the Act, this program consists essentially of three parts: (1) Testing; (2) labeling; and (3) establishing Federal energy conservation standards. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA and for representing the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether covered products comply with these energy conservation standards. (42 U.S.C. 6295(s)) Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. Specifically, EPCA provides that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine "to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure." (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2)) The amendments proposed in today's SNOPR will not alter the measured efficiency, as represented in the regulating metrics of seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF) of residential central air conditioners and heat pumps. Thus, today's proposed test procedure changes can be adopted without amending the existing standards. (42 U.S.C. 6293(e)(2))

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

On December 19, 2007, the President signed the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, which contains numerous amendments to EPCA. Section 310 of EISA 2007 established that the Department's test procedures for all covered products must account for standby mode and off-mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) In addition, section 306(a) of EISA 2007 amended EPCA section 325(o)(6) to consider one or two regional standards for residential central air conditioners and heat pumps (among other products) in addition to a base national standard. (42 U.S.C. 6295(o)(6)(B)) Today's SNOPR includes proposals relevant to these statutory provisions.

DOE's existing test procedures for residential central air conditioners and heat pumps adopted pursuant to these provisions appear under Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix M ("Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps"). These procedures establish the currently permitted means for determining annual energy efficiency and annual energy consumption of these products.

B. Background

DOE's initial proposals for calculating a regional performance metric, estimating off-mode energy consumption, and selecting the low-voltage transformer in the test procedure for residential central air conditioners and heat pumps were first shared with interested parties in a notice of proposed rulemaking published in the **Federal Register** on June 2, 2010 (June 2010 NOPR) and at a public meeting at DOE headquarters in Washington, DC on June 11, 2010. 75 FR 31224. Comments received in response to the June 2010 NOPR, as well as a transcript of the public meeting are available at *http://www.regulations.gov*. DOE received comments from twelve interested parties on or before the closing date of the June 2010 NOPR public review period, August 16, 2010. These parties raised significant issues and suggested changes to the test procedure proposals in the 2010 June NOPR, described below. Based on these comments and laboratory testing conducted by DOE, DOE's position on these topics has evolved. Today's SNOPR shares DOE's current position on the test procedure for residential central air conditioners and heat pumps, and provides interested parties with a second opportunity to comment.

II. Summary of the Proposal

Today's SNOPR revisits three issues proposed in the June 2010 NOPR: (1) Test methods and calculations for off-mode power and energy consumption; (2) the selection and metering of the low-voltage transformer used when testing coil-only units; and (3) the use of a regional SEER Hot-Dry metric.[2] 75 FR 31238–42. Today's SNOPR also proposes two additional items not covered in the June 2010 NOPR: (1) Calculation of the EER for use as a regional metric in the proposed hot-dry region and (2) combination of seasonal off-mode energy descriptors, *P1* and *P2*, into a single off-mode descriptor, PW_{OFF}.

Regarding the first issue, test methods and calculations for off-mode power and energy consumption, DOE now proposes to revise the off-mode laboratory tests and calculation algorithms set forth in the June 2010 NOPR to be more specific to the hardware and controls of the tested residential central air conditioner or heat pump. For units with a crankcase heater, DOE now proposes that the specific test and calculation combination will depend on whether (1) The heater is applied to a central air conditioner or heat pump; (2) the heater is fixed output or self-regulating; (3) the heater is thermostatically controlled or on continuously when the compressor is off; and (4) the thermostatic control is based on a local measurement that senses the temperature increase caused by the heater or based on a "global" measurement that is not influenced by the heater. For central air conditioning and heat pump units tested without an indoor blower installed, and for central air conditioners and heat pumps tested and rated with a particular furnace or modular blower, DOE proposes steps to separate out the power that will be reflected in the off-mode ratings of the furnace or modular blower, thus avoiding miscalculation of the off-mode energy consumption. Furthermore, DOE proposes to introduce the seasonal descriptor PW_{OFF} to describe the overall off-mode rating for residential central air conditioners and heat pumps.

Regarding the requirements proposed in the June 2010 NOPR for selecting and metering the lab-added, low voltage transformer used when testing coil-only residential central air conditioners and heat pumps, 75 FR 31238, DOE now

[2] The region specified as hot and dry for which this metric was proposed NOPR consists of Arizona, California, New Mexico, and Nevada. These States and the basis for their selection are described in the technical support document (TSD) prepared as part of the development of the residential central air conditioner and heat pump standards rulemaking.

proposes an additional requirement that the lab-added, low voltage transformer be a toroidal design. Further, today's proposal calls for the manufacturer to provide specifications for selecting the lab-added transformer. If the manufacturer fails to provide specifications for the low-voltage transformer, a set of default specifications are provided within the proposed test procedure. DOE also proposes today that the requirement to measure the power input to the lab-added transformer, and the low-voltage components that are connected to it, should apply only during off-mode tests as opposed to during all tests, as proposed in the June 2010 NOPR. 75 FR 31238. For all other tests on coil-only units tested using a lab-added transformer, metering the power consumed by the low voltage components would not be required under today's proposal.

Today's SNOPR also proposes an addition to the test procedure to calculate an EER metric for steady-state cooling mode testing. In this regard, the SNOPR proposes to add testing and calculation steps for estimating residential central air conditioners and heat pumps' cooling seasonal performance when applied in the proposed hot-dry region of Arizona, California, New Mexico, and Nevada. 75 FR 31239–41. DOE proposes to eliminate the descriptor proposed in the June 2010 NOPR for this regional rating, SEER Hot-Dry.

DOE proposes to make the off-mode test procedure additions in today's SNOPR effective 180 days after publication of the test procedure final rule in the **Federal Register**. By doing so, DOE would not require manufacturers to publish the new rating metrics by this time, but rather, would require that manufacturers use the amended test procedure as of this date. In addition, DOE proposes to make the compliance date for these test procedure amendments correspond to the compliance date for the amended energy conservation standards for residential central air conditioners and heat pumps.

III. Discussion

This section provides discussion on the revisions and additions to the test procedure that DOE proposes in this SNOPR, based in part on comments DOE received in response to the June 2010 NOPR. Section 0 describes DOE's proposed changes to test methods and calculations for off-mode power and energy consumption. Section 0 discusses DOE's proposed changes to the requirements for selecting and metering the lab-added low voltage transformer used when testing coil-only residential central air conditioners and heat pumps without a specific furnace or modular blower. Section 0 discusses DOE's proposal to abandon the regional SEER Hot-Dry metric that was proposed in the June 2010 NOPR. Sections 0 and 0 describe proposed amendments to the test procedure that were not included in the June 2010 NOPR; specifically, calculation of EER during cooling mode steady-state testing and the combination of the two seasonal off-mode ratings for residential central air conditioners proposed in the June 2010 NOPR, *P1* and *P2,* to yield a single overall rating, PW_{OFF}.

As part of today's rulemaking, DOE provides the specific proposed revisions to 10 CFR part 430, subpart B, appendix M, "Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps."

A. Test Methods and Calculations for Off-Mode Power and Energy Consumption of Residential Central Air Conditioners and Heat Pumps

In the June 2010 NOPR, DOE proposed test procedure amendments that quantified off-mode power consumption of residential central air conditioners and heat pumps, as required by 42 U.S.C. 6295(gg)(2)(A). 75 FR 31238–39. These proposals included testing and calculation methods for estimating the energy consumption of a residential central air conditioner during the heating season when the unit is typically turned off at the thermostat, but when its controls and protective devices remain energized. Additional amendments proposed in today's SNOPR consider those times when the products are idle during the shoulder season. The shoulder season is the period of time during the year when a residential central air conditioner or heat pump is providing neither heating nor cooling. The duration of the shoulder season for each generalized climatic region equals the difference between a full 8,760-hour year and the number of hours assigned to the cooling and heating seasons of each region as identified in Table 19 of appendix M to subpart B of 10 CFR part 430 (shown as Table 0.1 below).

TABLE 0.1—REPRESENTATIVE COOLING AND HEATING LOAD HOURS FOR EACH GENERALIZED CLIMATIC REGION

Region	* CLH_R	** HLH_R
I	2400	750
II	1800	1250
III	1200	1750
IV	800	2250
V	400	2750
VI	200	2750

* CLH_R—Cooling Load Hours (representative).
** HLH_R– Heating Load Hours (representative).

DOE proposed in the June 2010 NOPR to modify the EISA 2007 definition of the term "off-mode," [3] pursuant to the authority granted under 42 U.S.C. 6295(gg)(1)(B), to include the operation of a residential central air conditioner or heat pump during the shoulder season and, for central air conditioners only, during the heating season. 75 FR 31231. DOE proposed new laboratory tests and calculation algorithms for estimating the average power consumption of residential central air conditioners and heat pumps operating during off-mode. 75 FR 31238–39. The June 2010 NOPR also proposed that the average off-mode power consumption for central air conditioners and heat pumps during the shoulder season be represented by the parameter *P1,* and the average off-mode power consumption of a residential central air conditioner during the heating season be represented by the parameter *P2.* 75 FR 31239.

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) and the American Council for an Energy-Efficient Economy (ACEEE) both agreed

[3] Section 325(gg) of EPCA defines the term "off mode" as "the condition in which an energy-using product is connected to a main power source and is not providing any standby or active mode function." 42 U.S.C. 6295(gg)(1)(A)(ii).

with DOE that the off-mode rating should be separated from the existing regulating metrics of SEER and HSPF. (AHRI, Public Meeting Transcript, No. 5 at p. 161; ACEEE, Public Meeting Transcript, No. 5 at p. 161) [4] Trane acknowledged that inclusion of off-mode energy consumption in the basic performance descriptors was not feasible. (Trane, No. 10.1 at p. 3)

The Northwest Energy Efficiency Alliance (NEEA) concurred with DOE's proposed definition of "off-mode." (NEEA, No. 7.1 at p. 7) However, the People's Republic of China (China) stated that DOE should define off-mode for central air conditioners and heat pumps to be consistent with International Electrotechnical Commission (IEC) Standard 62301 (1st edition). (China, No. 18.1 at p. 5) China also commented that off-mode, as set forth in the June 2010 NOPR, is defined as a period of time, without including a description of the specific status of the product. China hoped DOE would clarify the specific status of the product in its definition of off-mode. (China, No. 18.1 at p. 5) Finally, China expressed its hope that DOE would further clarify the proposed test procedure for off-mode energy consumption, and whether off-mode energy consumption includes the energy consumption of protective devices. (China, No. 18.1 at p. 5)

The off-mode definition presented in the June 2010 NOPR is consistent with the objectives of EISA 2007. (42 U.S.C. 6295(gg)(2)(A)) The energy consumed by any protective device (e.g., a crankcase heater) that operates while the central air conditioner sits idle during the off-mode is included in the off-mode rating. The proposed off-mode definition accounts for all modes and intervals of energy consumption that are not captured in the existing regulating performance metrics. By comparison, IEC 62301 applies to a wide range of household appliances and seeks to quantify the standby power of these appliances, which is loosely defined as the power consumed when the appliance is not performing its main function. This simple definition is not readily applicable to residential central air conditioners and heat pumps because SEER and HSPF include power consumption during all possible operating modes. A more product-specific definition was needed and was proposed in the June 2010 NOPR. 75 FR 31238–39. DOE considered the comments received pertaining to the definition of off-mode, but has tentatively chosen to leave the definition proposed in the June 2010 NOPR unchanged.

At the June 2010 NOPR public meeting, Trane stated that the cooling load hours proposed in the amended test procedure do not correlate with the compressor running hours and, as a result, DOE is in danger of incorrectly counting the time when the compressor is running as time attributable to off-mode. (Trane, Public Meeting Transcript, No. 5 at p. 143) The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) stated that the cooling load hours have been used since the test procedure was established and that it may be time to review that. (AHRI, Public Meeting Transcript, No. 5 at p. 145) DOE agrees that it may be time to revisit the cooling load hour distributions, but lacks sufficient data to do so at this time. DOE requests input from interested parties that may be relevant to an update of the cooling load hour and heating load hour distributions.

DOE has evaluated these comments and determined that the approach for establishing the duration of the off-mode seasons proposed in the June 2010 NOPR, 75 FR at 31239, 31269–70, and repeated in today's SNOPR, remains the most defensible option. The approach obtains the hours for each off-mode season directly from the cooling and heating load hour combinations that have been used since the test procedure for residential central air conditioners and heat pumps was established in 1979. Until those load hour maps (Figures 2 and 3 from 10 CFR part 430, subpart B, appendix M), are updated based on newly available data, or an alternative approach is identified for defining the magnitude of the seasonal building loads (when expressed on an energy basis and, as a consequence, the hours in each season), DOE concludes that the proposed approach is appropriate.

With regard to the off-mode tests proposed in the June 2010 NOPR, Trane stated that it is unrealistic to expect that a thermostat would be accurate to 65 degrees plus or minus 2 degrees. (Trane, Public Meeting Transcript, No. 5 at p. 146) ACEEE stated that thermostatic controller testing will vary because the time constant for changing the temperature of the test chamber will differ based on the response of the system. (ACEEE, Public Meeting Transcript, No. 5 at p. 156) Johnson Controls concurred with the ACEEE comment. (Johnson Controls, Public Meeting Transcript, No. 5 at p. 158)

The proposed revisions to the off-mode test method in today's SNOPR address the above comments. For crankcase heaters whose ON/OFF operation is regulated by an ambient temperature thermostat, the manufacturer-provided ON and OFF temperatures—*T00* and *T100,* respectively—would be deemed verified if the lab-measured values are within ±5 °F of the manufacturer-provided values. If the manufacturer's values for *T00* or *T100* are not verified, the lab-measured value would be rounded to the nearest 5 °F increment of 65 °F, instead of to the nearest 2.5 °F increment, as proposed in the June 2010 NOPR. 75 FR 31261. For off-mode tests that will require longer intervals to complete because of the relatively slow thermal response of the compressor and crankcase heater system, options are provided in today's proposal for shortening the duration of the test. In the case of self-regulating crankcase heaters, rather than requiring the heater to achieve steady-state operation before measuring steady-state performance, collected data with respect to the heater's power output as a function of elapsed time would be extrapolated to reasonably approximate steady-state performance. Similarly, manufacturers would be given the option of taking a slightly conservative estimate of the off-mode power consumption for crankcase heaters whose operation is regulated based on local control, rather than extending the off-mode test for several extra hours.

At the public meeting, AHRI asked DOE if testing had been done to measure off-mode energy consumption. (AHRI, Public Meeting Transcript, No. 5 at p. 147) DOE responded that testing had not been done. AHRI stated DOE should take into account the fact that there had been no testing done on the products, and therefore DOE did not know if the proposed test procedure would work. (AHRI, Public Meeting Transcript, No. 5 at p. 162) AHRI stated that it does not support adding testing procedures and calculations for off-mode energy consumption since the algorithm proposed in the June 2010 NOPR had not been tested by DOE or any manufacturers. (AHRI, No. 6.1 at p. 5) [5] NEEA stated that it found DOE's proposals to measure off-mode energy

[4] In this discussion, comments presented in the form "AHRI, Public Meeting Transcript, No. 5 at p. 161" indicate a comment that was recorded in the public meeting transcript for the June 2010 NOPR and is included in docket for this rulemaking. This particular notation refers to a comment (1) by AHRI, (2) in document number 5 in the public meeting support materials, and (3) appearing on page 161.

[5] In this discussion, comments presented in the form "AHRI, No. 6.1 at p. 5" indicate a written comment that was submitted to DOE and is included in docket for this rulemaking. This particular notation refers to a comment (1) by AHRI, (2) in document number 6.1 in the public meeting support materials, and (3) appearing on page 5.

consumption problematic because there are no data from actual testing. In order for these values to be most useful to consumers, NEEA asserted that they would have to be published for each climatic region. (NEEA, No. 7.1 at p. 7) NEEA requested that DOE provide actual test data from systems with a crankcase heater so NEEA could better understand the interaction between test procedure requirements and the technologies and control strategies used in the field. (NEEA, No. 7.1 at p. 7) Lennox agreed with AHRI's recommendations that DOE provide more time for the consideration of its proposed testing procedures and calculations for off-mode energy consumption. (Lennox, No. 11.1 at p. 2)

After the close of the comment period following the June 2010 NOPR, DOE conducted laboratory testing on a complete heat pump system and a stand-alone compressor that were equipped with different crankcase heaters, regulated using different control strategies. As a result, DOE has revised its off-mode test methods. To provide a means for interested parties to consider these proposed methods, DOE has published this SNOPR. Interested parties are asked to consider and comment on these proposed off-mode test methods so that any changes that are warranted can be implemented prior to publication of the test procedure final rule.

The primary purpose of the off-mode test method is to develop a way to measure energy used by the crankcase heater, which represents the greatest consumption of energy during the off-mode period. For units with a crankcase heater, DOE proposes an off-mode test method designed to be more systematic and cover more specific cases. The revised off-mode test method proposed today differentiates between residential central air conditioners and heat pumps, between fixed-output and self-regulating crankcase heaters, and between thermostatically controlled and continuously on designs. Designs that regulate the ON/OFF status of the heater based on an outdoor ambient thermostat (global control) would be covered, as well as designs that regulate the heater based on measuring or inferring the temperature of the compressor's sump (local control). The proposed test methods are applicable to belly-band and insertion type heaters and to designs that use an insulating cover for the compressor and crankcase heater.

Today's proposed off-mode test method would cover coil-only units, blower coil units, and coil-only units tested and rated with a furnace fan or modular blower. The off-mode ratings for coil-only units would include the power consumption of the low-voltage components other than the lab-added, low-voltage transformer. Similarly, the off-mode ratings for coil-only units tested and rated with a particular furnace or modular blower would exclude the power consumption of any components housed within the furnace or modular blower. The power consumption of the lab-added transformer and the power consumption of the idle furnace or modular blower would be measured separately and then subtracted from the total off-mode power measured for the tested system. In these cases, the power consumption of the transformer and off-mode power used by a particular furnace or modular blower would be reflected in the electrical off-mode rating of the furnace or modular blower. The off-mode rating for conventional blower coil units would reflect all sources of off-mode power consumption.

In the vast majority of cases, the time required to complete the revised off-mode tests varies from less than 1 hour to up to 12 hours. Two of the more time-intensive off-mode tests proposed in this SNOPR pertain to approximating the "power consumption versus outdoor temperature" relationship of a self-regulating crankcase heater, and to measuring the average power consumption of crankcase heaters that use local thermostatic control. The electrical resistance of self-regulating heaters varies with temperature, with the resistance decreasing as temperature increases. Because of the relatively large thermal mass of the compressor, several hours are required to approach a power level that is representative of the final steady-state power output from a self-regulating heater when heating a compressor that is otherwise obtaining equilibrium with the ambient air. To balance test burden with reasonable repeatability, DOE proposes to require the regular measurement of the power over an interval during which the outdoor ambient temperature varies 2 °F or less, and the power data displays a monotonic trend as it approaches its steady-state value. Under today's proposal, manufacturers would be required to specify whether the test terminates after collecting 3 hours of data, or whether the test continues over a longer interval. "Power versus elapsed time" data would be curve-fitted using one of two equations—one equation if the power data decreases with elapsed time and another equation if the power data increases with elapsed time. Once the constants of the equations are determined using a curve-fitting program, the resulting equation would be used to estimate the power consumption of the heater had the asymptotic response been allowed to continue until it reached a steady-state. The test procedure would use an elapsed time of 24 hours to approximate the steady-state limit (rather than requiring the evaluation of the equation as time approaches infinity). DOE proposes limits on how much the extrapolated value could vary from the average power measured prior to terminating the test. This process would then be repeated at a second outdoor temperature.

Under the proposal, crankcase heaters that use local thermostatic control would be monitored until successive heater ON + heater OFF cycles yield average power consumption values that differ by 1 watt or less. As an alternative, the manufacturer could choose to discontinue the test as soon as a minimum of three consecutive heater ON + heater OFF cycles are recorded, where the average power from each complete cycle is less than the average power from the prior cycle. For both test termination options, two additional requirements would need to be met: (1) The elapsed time between the start of the first crankcase heater ON cycle and the test termination must be a minimum of 3 hours and (2) the outdoor temperature during the two or more complete cycles that meet the termination criteria must vary by 2 °F or less. If the manufacturer does not choose from the off-mode test termination criteria, testing requirements based on the average power differing by less than 1 watt for successive cycles would be used. For residential central air conditioners (but not heat pumps) with crankcase heaters that use local thermostatic control, the above off-mode test method would be repeated at a second outdoor temperature.

B. Selecting the Low-Voltage Transformer Used When Testing Coil-Only Central Air Conditioners and Heat Pumps and Required Metering of Low-Voltage Components During Off-Mode Test(s)

In today's SNOPR, DOE proposes that the test laboratory select a toroidal transformer when testing coil-only units. Toroidal transformers have fewer losses, less efficiency variation with loading, and lower power requirements at zero loading than laminated core transformers. DOE proposes that some of the characteristics of the toroidal transformer may be specified by the manufacturer (*e.g.,* volt-amp rating, voltage input, voltage output);

otherwise, a set of default criteria would be provided in the amended test procedure. DOE also proposes to change the load rating specification from an absolute volt-amp rating to a range of percent loading to better cover all possible units, ensure the transformer is adequately sized to meet the load, and provide more flexibility to the testing laboratory.

In the June 2010 NOPR, DOE proposed requiring the measurement of the power consumption of the low-voltage components that are part of all tested units during every DOE-specified laboratory test. 75 FR 31238. The June 2010 NOPR targeted coil-only residential central air conditioners and heat pumps tested using a low-voltage transformer selected by the testing laboratory. Usually, the power consumption of low-voltage components powered by this lab-added transformer is not metered. The June 2010 NOPR also listed proposed specifications for the lab-added transformer. *Id.* Under this proposal, the instrument used to measure the electrical power supplied to the transformer would be required to do so within the measurement accuracy prescribed for the other electrical components. *Id.* Because the proposal would alter the SEER and HSPF ratings of the products, DOE planned to require the measurement of low-voltage components on the compliance date for the amended energy conservation standards for residential central air conditioners and heat pumps.

At the June 2010 NOPR public meeting, ACEEE supported DOE's premise while questioning whether the word "transformer" in the test procedure should be replaced with "power supply." (ACEEE, Public Meeting Transcript, No. 5 at p. 183) Trane stated that the usage of "transformer" is technically correct. (Trane, Public Meeting Transcript, No. 5 at p. 185). DOE concurs that the use of the word "transformer" to describe the low-voltage power source is correct. In its written comments, NEEA supported the inclusion of transformer energy use in the test procedure, but noted that there may be a wide variety of both transformer and power supply efficiencies, and therefore asked DOE to provide some documentation for its assumptions. (NEEA, No. 13.1 at p. 8) AHRI argued against specifying requirements for the low-voltage transformer used when testing coil-only residential central air conditioners and heat pumps and requiring the metering of all sources of energy consumption during all tests. AHRI noted that the SEER and HSPF values for coil-only units would decrease, causing the minimum Federal standards to need to be modified for these products. AHRI also noted that "accounting for the transformer power in SEER and HSPF [would] be double-dipping when the furnace standards are also revised to include the transformer power." (AHRI, No. 6.1 at p. 5)

Based on this discussion, DOE proposes to exclude changes that would alter the SEER and HSPF ratings of currently rated residential central air conditioners and heat pumps because such changes would require adjustments to the standard levels currently being considered. (42 U.S.C. 6293(e)(2)) As such, the proposed test procedure does not require metering the power consumption of the low-voltage components of a coil-only system when conducting the lab tests used in calculating SEER and HSPF. Instead, the power consumption of these low-voltage components, however, would be measured during the proposed off-mode testing.

C. Withdrawal of the Proposal To Add the New Regional Performance Metric SEER Hot-Dry

DOE has the option of implementing regional standards for residential central air conditioners and heat pumps, if justified. (42 U.S.C. 6295(o)(6)(D)(i)) In the June 2010 NOPR, DOE proposed additional testing and calculations to evaluate a new cooling season efficiency rating that was specific to the proposed region of the country with a hot-dry climate. The proposed regional regulating metric was identified as SEER Hot-Dry and applied to the States of California, Nevada, New Mexico, and Arizona. 75 FR 31239–42.

Comments made at the June 2010 NOPR public meeting and written comments that followed overwhelmingly supported the use of a steady-state EER descriptor over the proposed SEER Hot-Dry descriptor for the hot-dry region. EnergySolutions withdrew its support of SEER Hot-Dry in favor of EER, noting that the SEER Hot-Dry metric does not adequately represent conditions at full load and therefore does not give the manufacturer the opportunity to differentiate products that perform very well at high temperatures. (EnergySolutions, Public Meeting Transcript, No. 5 at p. 170) At the public meeting, ACEEE took the same position. (ACEEE, Public Meeting Transcript, No. 5 at p. 175; ACEEE, Public Meeting Transcript, No. 5 at p. 195) Two manufacturers stated their opposition to a SEER Hot-Dry metric due to the increased testing burden that it would create. (Mitsubishi, Public Meeting Transcript, No. 5 at p. 176; Trane, Public Meeting Transcript, No. 5 at p. 203) ACEEE stated that the building loads and bin temperature distributions for the proposed SEER Hot-Dry metric were not representative of typical weather and operating conditions in a hot-dry location. (ACEEE, No. 8.1 at p. 2) Several interested parties supported the consensus agreement [6] in general and the use of EER as the basis for establishing a regional standard in the hot-dry region in particular, a position outlined in the consensus agreement. (Mitsubishi, Public Meeting Transcript, No. 5 at p. 176; AHRI, No. 6.1 at p. 5; Lennox, No. 11.1 at p. 2; NEEA, No. 7.1 at p. 7; ACEEE, No. 8.1 at p. 2; EnergySolutions, No 9.1 at p. 1; NRDC, No. 13.1 at pp. 1–2). In addressing a statement DOE included in the June 2010 NOPR, the Natural Resources Defense Council (NRDC) commented that "DOE's statement on its statutory authority to use multiple performance metrics is incorrect. DOE should revise the proposed test procedures as outlined in the consensus agreement because DOE has authority under the EPCA to adopt the Southwest regional SEER and EER consensus standards agreed upon by manufacturers and efficiency advocates and test procedures for such standards." (NRDC, No. 13.1 at p. 2)

The seasonal metric proposed in the June 2010 NOPR for the hot-dry region was not meaningful due to the inclusion of New Mexico and especially California (with its large coastal population). 75 FR 31240–41. Although the region was composed of contiguous States as required by EISA 2007, 42 U.S.C. 6295(o)(6)(C), the inclusion of these two States caused the population-weighted average weather conditions to be neither hot nor dry. DOE agrees that a seasonal performance descriptor such as SEER Hot-Dry does not adequately represent performance at full load conditions. As a result, DOE is today proposing a method to calculate the EER during Cooling Mode Steady State Tests. Assuming DOE was to adopt as final such EER test procedure; as a Final rule, DOE espects to withdraw its earlier proposal to include additional tests and

[6] On January 15, 2010, several interested parties submitted a joint comment to DOE recommending adoption of minimum energy conservation standards for residential central air conditioners, heat pumps, and furnaces, as well as associated compliance dates for such standards, which represents a negotiated agreement among a variety of interested stakeholders including manufacturers and environmental and efficiency advocates. The original agreement (referred to as the "consensus agreement") was completed on October 13, 2009, and had 15 signatories.

calculations in the test procedure to determine a SEER Hot-Dry rating.

D. Calculation of the Energy Efficiency Ratio for Cooling Mode Steady-State Tests

For central air conditioners, the consensus agreement recommends that DOE adopt dual metrics (*i.e.,* SEER and EER) for the hot-dry region. Generally, DOE notes that EPCA's definition of "efficiency descriptor" at 42 U.S.C. 6291(22) specifies that the efficiency descriptor for both central air conditioners and heat pumps shall be SEER. However, DOE believes that the language at 42 U.S.C. 6295(p)(4) provides DOE some measure of discretion when considering recommended standards in a consensus agreement, if the Secretary determines that the recommended standards are in accordance with 42 U.S.C. 6295(o). Today, DOE proposes to include within the test procedure the steps needed to define the calculation of EER for the proposed hot-dry region from the results of cooling mode, steady-state testing.

E. Off-Mode Performance Ratings

Because off-mode operation occurs during specific seasons, the most appropriate form of an off-mode rating is a seasonal descriptor. Moreover, off-mode represents times when a unit is consuming power while not providing space conditioning; therefore, the seasonal descriptor must be expressed in terms of average power or a representative energy consumption quantity (as efficiency is not an option). Given these two options, average power provides the greater utility because it is not as location-specific as energy consumption. Whereas the same off-mode average power consumption applies to any location within a DOE generalized climatic region, an off-mode energy consumption only applies to a unique location within that same climatic region. As such, a single average off-mode power rating can be used to calculate many off-mode energy values, while the opposite is not true. A representative off-mode energy rating would be specific to one particular combination of cooling season hours, heating season hours, and shoulder season hours. For these reasons, DOE proposes that the off-mode ratings be expressed as average power values.

For residential central air conditioners, two off-mode average power values were proposed in the June 2010 NOPR, one for the shoulder season (parameter *P1),* and one for the heating season (parameter *P2).* 75 FR 31238–39. *P1* and *P2* are both expressed in units of watts. Since heat pumps are only idle during the shoulder season, they only have a *P1* value. For residential central air conditioners using compressor crankcase heaters with heating output that changes with the outdoor temperature, *P2* will depend on the distribution of outdoor temperatures during the heating season. In such cases, the *P2* value will be different for each of the six generalized climatic regions referenced in the current DOE test procedure. (Refer to Figures 2 and 3 in 10 CFR part 430, subpart B, appendix M).

To allow straightforward comparisons among a variety of residential central air conditioners and heat pumps that may have different combinations of *P1* and *P2* values, these average power values can be weighted based on the length of the shoulder and heating seasons to yield an overall average power consumption value. Furthermore, in terms of the establishment of a minimum standard(s) for the off-mode, a single standard is preferable to setting separate standard levels for *P1* and *P2.* The most representative weighting would be those seasonal hours associated with the national average cooling and heating load hours of 1,000 and 2,080 hours, respectively, with *P2* based on generalized climatic Region IV. Region IV is proposed because the HSPF conservation standard and rating that appear on the Federal Trade Commission (FTC) EnergyGuide Label are based on this region. 75 FR 31239. In sum, DOE proposes a national average off-mode power consumption rating, *PWOFF*, for residential central air conditioners and heat pumps. DOE proposes combining the off-mode power rating for the shoulder seasons, *P1,* with the off-mode power rating for the heating season, *P2,* by weighting these ratings with respect to the lengths of the national average seasons: 739 hours for the shoulder seasons and 5,216 hours for the heating season.

For residential central air conditioners, DOE proposes $PW_{OFF} = 0.124 \times P_1 + 0.876 \times P_2$.

For residential heat pumps, DOE proposes $PW_{OFF} = PM_1$.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, so that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *http://www.gc.doe.gov.*

DOE reviewed today's proposed rule, which would amend the test procedure for residential central air conditioners and heat pumps, under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE tentatively concludes and certifies that the proposed rule, if adopted, would not result in a significant impact on a substantial number of small entities. The factual basis for this certification is set forth below.

For the purpose of the regulatory flexibility analysis for this rule, the DOE adopts the Small Business Administration (SBA) definition of a small entity within this industry as a manufacturing enterprise with 750 employees or fewer. DOE used the small business size standards published on January 31, 1996, as amended, by the SBA to determine whether any small entities would be required to comply with the rule. 61 FR 3280, 3286, as amended at 67 FR 3041, 3045 (Jan. 23, 2002) and at 69 FR 29192, 29203 (May 21, 2004); *see also* 65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000). The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

Residential central air conditioner and heat pump equipment manufacturing is classified under NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration

Equipment Manufacturing." 70 FR 12395 (March 11, 2005). DOE reviewed AHRI's listing of residential central air conditioner and heat pump equipment manufacturer members and surveyed the industry to develop a list of domestic manufacturers. As a result of this review, DOE identified 22 manufacturers of residential central air conditioners and heat pumps, of which 15 would be considered small manufacturers with a total of approximately 3 percent of the market sales. DOE seeks comment on its estimate of the number of small entities that may be impacted by the proposed test procedure.

Potential impacts of the proposed test procedure on all manufacturers, including small businesses, come from impacts associated with the cost of proposed additional testing. DOE estimates the incremental cost of the proposed additional tests described in 10 CFR part 430, subpart B, appendix M (proposed section 3.13) to be an increase of $1,000 to $1,500 per unit tested. This estimate is based on private testing services quoted on behalf of DOE in the last 2 years for residential central air conditioners and heat pumps. Typical costs for running the cooling tests appear to be approximately $5,000. DOE estimated that the additional activities required by the revised test procedure would introduce a 20 to 30 percent increase in testing time, resulting in the additional cost.

Because the incremental cost of running the extra tests is the same for all manufacturers, DOE believes that all manufacturers would incur comparable costs for testing of individual basic models as a result of the proposed test procedure. DOE expects that small manufacturers will incur less testing expense compared with larger manufacturers as a result of the proposed testing requirements because they have fewer basic models and thus require proportionally less testing when compared with large manufacturers that have many basic models. DOE recognizes, however, that smaller manufacturers may have less capital available over which to spread the increased costs of testing.

DOE compared the cost of the testing to the total value added by the manufacturers to determine whether the impact of the proposed test procedure amendments is significant. The value added represents the net economic value that a business creates when it takes manufacturing inputs (*e.g.,* materials) and turns them into manufacturing outputs (*e.g.,* manufactured goods). Specifically, as defined by the U.S. Census, the value added statistic is calculated as the total value of shipments (products manufactured plus receipts for services rendered) minus the cost of materials, supplies, containers, fuel, purchased electricity, and contract work expenses.

DOE analyzed the impact on the smallest manufacturers of residential central air conditioners and heat pumps because these manufacturers would likely be the most vulnerable to cost increases. DOE calculated the additional testing expense as a percentage of the average value added statistic for the five individual firms in the 25 to 49 employee size category in NAICS 333415 as reported by the U.S. Census (U.S. Bureau of the Census, American Factfinder, 2002 Economic Census, Manufacturing, Industry Series, Industry Statistics by Employment Size, *http://factfinder.census.gov/servlet/EconSectorServlet?_lang=en&ds_name=EC0200A1&_SectorId=31&_ts=288639767147*). The average annual value for manufacturers in this size range from the census data was $1.26 million in 2001$, per the 2002 Economic Census, or approximately $1.52 million per year in 2009$ after adjusting for inflation using the implicit price deflator for gross domestic product (U.S. Department of Commerce Bureau of Economic Analysis, *http://www.bea.gov/national/nipaweb/SelectTable.asp*).

DOE also examined the average value added statistic provided by census for all manufacturers with fewer than 500 employees in this NAICS classification as the most representative value from the 2002 Economic Census data of the residential central air conditioner manufacturers with fewer than 750 employees that are considered small businesses by the SBA (15 manufacturers). The average annual value added statistic for all small manufacturers with fewer than 500 employees was $7.88 million (2009$).

Given this data, and assuming the high-end estimate of $1,500 for the additional testing costs, DOE concluded that the additional costs for testing of a single basic model product under the proposed requirements would be approximately 0.1 percent of annual value added for the 5 smallest firms, and approximately 0.02 percent of the average annual value added for all small residential central air conditioner manufacturers (15 firms). DOE estimates that testing of basic models may not have to be updated more than once every 5 years, and therefore the average incremental burden of testing one basic model may be one fifth of these values when the cost is spread over several years.

DOE requires that only the highest sales volume split system combinations be lab tested. 10 CFR 430.24(m). The majority of air conditioners and heat pumps offered by a manufacturer are typically split systems that are not required to be lab tested but can be certified using an alternative rating method that does not require DOE testing of these units. DOE reviewed the available data for five of the smallest manufacturers to estimate the incremental testing cost burden for those small firms that might experience the greatest relative burden from the revised test procedure. These manufacturers had an average of 10 models requiring testing (AHRI Directory of Certified Product Performance, *http://www.ahridirectory.org/ahridirectory/pages/home.aspx*), while large manufacturers will have well over 100 such models. The additional testing cost for final certification for 10 models was estimated at $15,000. Meanwhile, these certifications would be expected to last the product life, estimated to be at least 5 years based on the time frame established in EPCA for DOE review of residential central air conditioner efficiency standards. This test burden is therefore estimated to be approximately 0.2 percent of the estimated 5-year value added for the smallest five manufacturers. DOE believes that these costs are not significant given other, much more significant costs that the small manufacturers of residential central air conditioners and heat pumps incur in the course of doing business. DOE seeks comment on its estimate of the impact of the proposed test procedure amendments on small entities and its conclusion that this impact is not significant.

Accordingly, as stated above, DOE tentatively concludes and certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an initial regulatory flexibility analysis (IRFA) for this rulemaking. DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of residential central air conditioners and heat pumps must certify to DOE that their product complies with any applicable energy conservation standard. In certifying compliance, manufacturers must test their product according to the DOE test procedure for residential central air

conditioners and heat pumps, including any amendments adopted for that test procedure. DOE has proposed regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential central air conditioners and heat pumps. 75 FR 56796 (Sept. 16, 2010). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act of 1995 (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Wes Anderson (*see* **ADDRESSES**) and by e-mail to *Christine_J._Kymn@omb.eop.gov*.

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

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes amendments to test procedures that may be used to implement future energy conservation standards for residential central air conditioners and heat pumps. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in DOE's NEPA regulations in appendix A to subpart D, 10 CFR part 1021. This rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's proposed rule and has determined that it does not preempt State law and does 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subjects of today's proposed rule. States can petition DOE for a waiver of such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort so that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General (Attorney General). Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA; Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments in the aggregate or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate" and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://www.gc.doe.gov.*) Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), that this proposed regulation, if promulgated as a final rule, would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. The OMB's guidelines were published in 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA, Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, it is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (15 U.S.C. 788). Section 32 essentially provides, in relevant part, that where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the FTC concerning the impact of the commercial or industry standards on competition.

Today's SNOPR does not incorporate testing methods contained in commercial standards.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and other information regarding the SNOPR no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this rulemaking.

Submitting comments via regulations.gov. The regulations.gov webpage will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, *see* the *Confidential Business Information* section.

DOE processes submissions made through regulations.gov before posting them online. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Email submissions are preferred. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in

PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, are written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 and 500 form letters per PDF, or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments on the following issues:

1. What is/are the best curve fit(s) to approximate how the power consumption of a self-regulating crankcase heater approaches steady-state during an off-mode test? DOE offers equations in this SNOPR to fit two operational scenarios: that in which crankcase heater power increases with time, and that in which crankcase heater power decreases with time.

2. Which hardware and controls designs would not be adequately covered by the proposed off-mode tests and calculations, if any? Please be as specific as possible in responding to this question.

3. Is the proposed approach for not crediting coil-only units with any power consumption associated with the furnace or modular blower that it will be combined with in the field, including the low voltage transformer, acceptable?

4. When testing a coil-only unit, the proposed requirement is that the selected low voltage transformer must be a "toroidal type," with additional specifications provided by the manufacturer. Is this proposed requirement sufficient or insufficient in promoting repeatable results?

5. For the case in which the manufacturer does not provide instructions for selecting the low voltage transformer used to test a coil-only unit, do the default specifications listed in proposed section 2.2(d) suffice and, if not, how can they be improved?

6. To cover the different types of crankcase heaters and control strategies, the proposed lab testing and calculations require several steps. Are any of the specific steps unclear? If so, which ones and why?

7. To update the cooling load hour and heating load hour distributions, more information is needed. Is there relevant data available to update these distributions?

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this SNOPR.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on March 24, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II of Title 10, Subpart B, Code of Federal Regulations, to read as follows:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Appendix M to subpart B of part 430 is amended:

a. In section 1, Definitions, by:

1. Redesignating sections 1.13 through 1.47 as follows:

Old sections	New sections
1.13	1.14.
1.14 to 1.17	1.16 to 1.19, respectively.
1.18 to 1.25	1.21 to 1.28, respectively.
1.26 to 1.28	1.31 to 1.33, respectively.
1.29	1.35.
1.30 to 1.33	1.37 through 1.40, respectively.
1.34 to 1.47	1.42 through 1.55, respectively.

2. Adding new sections 1.13, 1.15, 1.20, 1.29, 1.30, 1.34, 1.36, and 1.41.

b. In section 2, Testing Conditions, by adding, in section 2.2 new paragraph d.

c. In section 3, Testing Procedures, by:

1. Revising section 3.1.

2. Adding new section 3.13.

d. In section 4, Calculations of Seasonal Performance Descriptors, by:

1. Adding new section 4.2.6.

2. Revising section 4.3.1.

3. Adding new section 4.5.

4. Redesignating Tables 17 through 19 as 18 through 20, respectively.

The additions and revisions read as follows:

APPENDIX M TO SUBPART B OF PART 430—UNIFORM TEST METHOD FOR MEASURING THE ENERGY CONSUMPTION OF CENTRAL AIR CONDITIONERS AND HEAT PUMPS

* * * * *

1. * * *

* * * * *

1.13 Blower coil unit means a residential central air conditioner or heat pump where the indoor-side refrigerant-to-air heat exchanger coil is packaged in the same cabinet as the indoor blower. All single-packaged units are blower coil units; split-

system units may be either blower coil units or coil-only units.

* * * * *

1.15 Coil-only unit means a split-system residential central air conditioner or split-system heat pump where the indoor section includes a refrigerant-to-air heat exchanger coil but not a blower (fan). Coil-only units are designed to be installed and used in combination with a furnace or a modular blower.

* * * * *

1.20 Crankcase heater includes all devices and mechanisms for intentionally generating heat within and/or around the compressor sump volume to minimize the diluting of the compressor's refrigerant oil by condensed refrigerant.

* * * * *

1.29 Fixed-output crankcase heater means any heater that is designed for its power dissipation rate to not change more than 5 percent per 20 °C change in outdoor ambient temperature, if all other operating parameters are held constant.

* * * * *

1.30 Global control designates equipment having a thermostatically controlled crankcase heater in which the electrical power supplied to the heater is switched on and off based on a temperature measurement or thermostat that is not influenced by crankcase heater, when energized (*e.g.,* a thermostat that responds to ambient air temperature).

* * * * *

1.34 Local control designates equipment having a thermostatically controlled crankcase heater in which the electrical power supplied to the heater is switched on and off based on measurement or inference of the compressor's sump temperature.

* * * * *

1.36 Modular blower means a separate, self-contained indoor section that contains a blower (fan) and is designed to be installed and operate with a variety of coil-only units.

* * * * *

1.41 Self-regulating crankcase heater means any heater whose power dissipation changes in a consistent and repeatable manner in proportion to changes in the outdoor ambient temperature, if all other operating parameters are held constant. A heater made from a material having a positive temperature coefficient is an example of a self-regulating crankcase heater.

* * * * *

2.2 * * *

* * * * *

d. When testing coil-only residential central air conditioners and heat pumps, install a toroidal type transformer to power the low-voltage components of the coil-only system. The manufacturer shall designate any additional specification for this transformer. If the manufacturer does not so designate, use a transformer having the following features: a nominal V-amp rating that results in the transformer being loaded from 25 and 90 percent based on the highest power value expected and then confirmed during the off-mode test; designed to operate with a primary input of 230 V, single phase, 60 Hz; and that provides an output voltage that is within the allowed range for each low-voltage component. The power consumption of the lab-added low-voltage transformer, and the components connected to it, must be measured as part of the total system power consumption during the off-mode tests. This total system power for the coil-only unit, however, must then be reduced by the power consumed by the lab-added transformer when no load is connected to it.

* * * * *

3. * * *

3.1 General Requirements. If, during the testing process, an equipment set-up adjustment is made that would alter the performance of the unit when conducting an already completed test, then repeat all tests affected by the adjustment. For cyclic tests, instead of maintaining an air volume rate for each airflow nozzle, maintain the static pressure difference or velocity pressure during an ON period at the same pressure difference or velocity pressure as measured during the steady-state test conducted at the same test conditions.

Use the testing procedures in this section to collect the data used for calculating (1) Performance metrics for residential central air conditioners and heat pumps during the cooling season; (2) performance metrics for heat pumps during the heating season; and (3) power consumption metric(s) for residential central air conditioners and heat pumps during the off-mode season(s). For residential central air conditioners, the off-mode seasons are the shoulder seasons that separate the cooling and heating seasons and the entire heating season. For residential heat pumps, the shoulder season is the only off-mode season.

* * * * *

3.13 Laboratory testing to determine off-mode average power ratings.

3.13.1 Determine if the residential central air conditioner or heat pump has a compressor crankcase heater (*see* definition 1.51). If so equipped, determine from the manufacturer if the compressor crankcase heater's on/off operation is regulated using global control (*see* definition 1.53), local control (*see* definition 1.54), both local and global control, or is unregulated, with the heater operating continuously when the compressor is off. Also determine from the manufacturer if the crankcase heater is a fixed-output type (*see* definition 1.52) or a self-regulating type (*see* definition 1.56). Use Table 17 to determine the required test methods based on the type of crankcase heater installed.

Table 17. Selection of Test Procedure Section for Determining Off-Mode Power

Test Procedure Section	3.13.2	3.13.3	3.13.4.2	3.13.4.3 3.13.4.4	3.13.4.5.1	3.13.4.52	3.13.5	3.13.6	3.13.7 3.13.7.2	3.13.7 3.13.7.3 3.13.7.4	3.13.7.5.1	3.13.7.5.2	3.13.8	3.13.9
No Crankcase Heater	AC	HP												
Unregulated Crankcase Heater			AC						HP					
Globally Controlled Crankcase Heater				AC						HP				
Fixed Output Heater					AC						HP			
Self Regulating Heater						AC						HP		
Locally Controlled Crankcase Heater							AC						HP	
Globally and Locally Controlled Crankcase Heater								AC						HP

3.13.2 For residential central air conditioners not having a compressor crankcase heater, conduct the following off-mode test.

3.13.2.1 Configure the controls of the residential central air conditioner to mimic the operating mode as if connected to a building thermostat that is set to the OFF position. No requirements are placed on the ambient conditions within the indoor and outdoor test rooms. The room conditions are allowed to change for the duration of this particular test.

3.13.2.2 After the controls have been configured, wait at least 2 minutes. Then integrate the power consumption of the residential central air conditioner over a 5-minute interval. This integrated power consumption must include the power consumed by the low-voltage transformer and the low-voltage components connected to it. Calculate the average power consumption rate for the integration interval and designate it as P_5.

3.13.2.3 Power adjustment if testing a coil-only residential central air conditioner. For coil-only residential central air conditioners tested without an indoor blower installed and for residential central air conditioners tested and rated with a specific furnace or modular blower, reduce the overall system off-mode power measurement, P_5, by the power supplied to components not part of the residential central air conditioner. If tested without an indoor blower, disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the fully unloaded transformer over a 5-minute interval. If tested and rated with a specific furnace or specific modular blower, measure only the power supplied to the furnace or modular blower while idle (*e.g.,* disconnect the low-voltage wiring for the components housed in the residential central air conditioner parts of the system from the transformer) and integrate this power over a 5-minute interval. Calculate the average power consumption of the fully unloaded transformer, idle furnace, or idle modular blower over the integration interval and designate it as P_X. Subtract this average power consumption (P_X) from the previously calculated overall system average power (P_5) and designate it as P_{5X}.

3.13.2.4 For blower coil residential central air conditioners, round P_5 to the nearest integer wattage value and record this rounded value as both *P1* and *P2.* For coil-only residential central air conditioners, round P_{5X} to the nearest integer wattage value and record this rounded value as both *P1* and *P2.* If the resulting *P1* and *P2* are each less than 1 watt, assign each of them the value of zero.

3.13.3 For heat pumps not having a compressor crankcase heater, conduct the following off-mode test.

3.13.3.1 Configure the controls of the heat pump to mimic the operating mode as if connected to a building thermostat that is set to the COOL mode but whose temperature setpoint is satisfied. No requirements are placed on the ambient conditions within the indoor and outdoor test rooms. The room conditions are allowed to change for the duration of this particular test.

3.13.3.2 After the controls have been configured, wait at least 2 minutes. Then integrate the power consumption of the heat pump over a 5-minute interval. This integrated power consumption must include the power consumed by the low-voltage transformer and the low-voltage components connected to it. Calculate the average power consumption rate for the integration interval. Record this value as P_{5C}.

3.13.3.3 Reconfigure the controls of the heat pump to mimic the operating mode as if connected to a building thermostat that is set to the HEAT mode but with its temperature setpoint satisfied.

3.13.3.4 After the controls have been reconfigured, wait at least 2 minutes. Then integrate the power consumption of the heat pump over a 5-minute interval. Calculate the

average power consumption rate for the integration interval. Record this value as P_{5H}.

3.13.3.5 Power adjustment if testing a coil-only heat pump. For coil-only heat pumps tested without an indoor blower installed, and for heat pumps tested with a specific furnace or modular blower, reduce the overall system off-mode power measurements, P_{5C} and P_{5H}, by the power supplied to components not part of the heat pump. If tested without an indoor blower, disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the fully unloaded transformer over a 5-minute interval. If tested and rated with a specific furnace or specific modular blower, take steps to measure only the power supplied to the furnace or modular blower while idle (*i.e.,* disconnect the low-voltage wiring for the components housed in the heat pump parts of the system from the transformer) and integrate this power over a 5-minute interval. Calculate the average power consumption of the fully unloaded transformer, idle furnace, or idle modular blower over the integration interval and designate it as P_X. Subtract this average power consumption (P_X) from the previously calculated overall system average power values (P_{5C} and P_{5H}) and designate the differences as P_{5CX} and P_{5HX}.

3.13.3.6 For blower coil heat pumps, calculate $P1 = (P_{5C} + P_{5H})/2$ and round to the nearest integer wattage. For coil-only heat pumps, calculate $P1 = (P_{5CX} + P_{5HX})/2$ and round to the nearest integer wattage.

3.13.4 For residential central air conditioners having a compressor crankcase heater whose on/off operation is either unregulated or is regulated using only global control, conduct the following off-mode test.

3.13.4.1 Configure the controls of the residential central air conditioner to mimic the operating mode as if connected to a building thermostat set to the OFF position and then wait at least 2 minutes.

3.13.4.2 If the compressor crankcase heater is unregulated and so operates continuously when the unit is sitting idle, assign $T00 = T100 = 75$ °F. Skip to section 3.13.4.5.

3.13.4.3 If the compressor crankcase heater is regulated using global control, conduct the following steps. If the manufacturer-provided *T00* is greater than or equal to 75 °F, *T00* and *T100* are deemed verified; skip to section 3.13.4.5. Otherwise, first evaluate *T00* and *T100* as described in section 3.13.4.4.

3.13.4.4 If the compressor crankcase heater is regulated using global control and the manufacturer-provided *T00* is less than 75 °F, position a lab-added temperature sensor in the air between 2 and 6 inches from the crankcase heater thermostat used for the global control, or between 2 and 6 inches of the temperature sensor used by the crankcase heater's global controller. For this off-mode test only, use this lab-added temperature sensor to measure the outdoor dry bulb temperature. Also, monitor the power measurement that includes the crankcase heater to provide an indication of when the crankcase heater is on versus off. Maintain the dry bulb temperature in the indoor test room between 75 °F and 85 °F.

If the crankcase heater is energized by the global control device at the beginning of this evaluation process, achieve a dry bulb temperature in the outdoor test room that is equal to or less than the quantity of *T100*—5 °F, where *T100* is the manufacturer provided value, and wait for 30 minutes. Thereafter, increase the dry bulb temperature in the outdoor test room in increments of no more than 1 °F per 5 minutes until the crankcase heater cycles off. When the heater cycles off, record the reading of the lab-added temperature sensor. If this reading is within ±5 °F of the manufacturer-provided *T100,* then the manufacturer-provided value is deemed verified; otherwise, round the measured temperature of the lab-added sensor to the nearest 5 °F increment relative to a 65 °F reference (*e.g.,* 65 °F, 70 °F, 75 °F, * * * or 60 °F, 55 °F, 50 °F, * * *) and designate this rounded value as the new *T100.* If the crankcase heater cycled off prior to beginning the 1 °F per 5 minute increases within the outdoor test room, the evaluation of *T100* must be repeated after first evaluating *T00* as described below. For this second attempt at evaluating *T100,* begin the 1 °F per 5 minute increases after achieving a steady outdoor temperature for at least 30 minutes during which the heater does not cycle off.

Next, achieve a dry bulb temperature in the outdoor test room that is equal to or greater than the quantity of *T00* + 5 °F, where *T00* is the manufacturer provided value, and wait for 30 minutes. Thereafter, begin decreasing the dry bulb temperature in the outdoor test room in increments of no more than 1 °F per 5 minutes until the crankcase heater cycles on. When the heater cycles on, record the reading of the lab-added temperature sensor. If this reading is within ±5 °F of the manufacturer-provided *T00,* then the manufacturer-provided value is deemed verified; otherwise, round the measured temperature of the lab-added sensor to the nearest 5 °F increment relative to a 65 °F reference (*e.g.,* 65 °F, 70 °F, 75 °F, * * * or 60 °F, 55 °F, 50 °F, * * *) and designate this rounded value as the new *T00.* If the crankcase heater cycled on prior to beginning the 1 °F per 5 minute decreases within the outdoor test room, the evaluation of *T00* must be repeated after first evaluating *T100* as described above. For this second attempt at evaluating *T00,* begin the 1 °F per 5 minute decreases after achieving a steady outdoor temperature for at least 30 minutes during which the heater does not cycle on.

If the crankcase heater is de-energized at the beginning of this evaluation process, reverse the steps described above: evaluate *T00* and then *T100.*

3.13.4.5 For crankcase heaters that are the fixed output type, conduct the average power consumption measurement(s) described in 3.13.4.5.1. For crankcase heaters that are the self-regulating type, conduct the average power consumption measurements described in 3.13.4.5.2.

3.13.4.5.1 If the crankcase heater is a fixed output type, integrate the power consumption of the residential central air conditioner over a 5-minute interval when the crankcase heater is on continuously. The temperature in the outdoor test room may need to be lowered to activate the heater for this test. This integration period may be conducted in combination with the steps described in section 3.13.4.4. The temperature of the outdoor test room is allowed to vary during the 5-minute data collection interval. Calculate the average power consumption rate for the integration interval and record it as P_{5N}.

If *T00* is less than 75 °F, also integrate the power consumption of the residential central air conditioner over a 5-minute interval where the crankcase heater is off for the entire interval. The temperature in the outdoor test room may need to be increased to deactivate the heater for this test. Disconnecting the power to the heater is also permitted to temporarily disable it and obtain the off-mode power corresponding to no crankcase heater operation. The power integration period may be conducted in combination with the steps described in section 3.13.4.4. The temperature of the outdoor test room is allowed to vary during the 5-minute data collection interval. Calculate the average power from the integration interval and record it as P_{5F}.

The integrated power consumption measurements P_{5N} and P_{5F}, described above, must include the power consumed by the low-voltage transformer and the low-voltage components connected to it.

3.13.4.5.1.1 For coil-only residential central air conditioners tested without an indoor blower installed and for residential central air conditioners tested with a specific furnace or modular blower, reduce the overall system off-mode power measurements, P_{5N} and P_{5F}, by the power supplied to the components that are not part of the residential central air conditioner. If tested without an indoor blower, disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the fully unloaded transformer over a 5-minute interval. If tested and rated with a specific furnace or specific modular blower, measure only the power supplied to the furnace or modular blower while idle (*e.g.,* disconnect the low-voltage wiring for the components housed in the residential central air conditioner parts of the system from the transformer) and integrate this power over a 5-minute interval. Calculate the average power consumption of the fully unloaded transformer, idle furnace, or idle modular blower for the integration interval and designate it as P_X. Subtract this average power consumption (P_X) from the previously calculated overall system average power to obtain the adjusted values. Calculate:

$$P_{CC} = P_{5N} - P_X \text{ and}$$

$$P_{NC} = P_{5F} - P_X .$$

3.13.4.5.1.2 For blower-coil residential central air conditioners, set $P_{CC} = P_{5N}$ and $P_{NC} = P_{5F}$.

3.13.4.5.2 If the crankcase heater is a self-regulating type, either three or four data collection intervals are required. Prior to beginning a data collection interval, maintain the outdoor room temperature at a nominally steady value that is between *T00* and *T00*—

10 °F for at least 15 minutes. Also, for at least 5 minutes prior to the start of a data collection interval, operate with the crankcase heater on. Then, with the crankcase heater remaining on continuously, record the power consumption of the residential central air conditioner and the outdoor room temperature at equal time intervals that each span 5 minutes or less. Discontinue the data collection when the outdoor room temperature varies 2 °F or less over at least a 3-hour interval; do not collect data for more than 24 hours. From power data recorded during the last 15 minutes of the data collection interval, calculate an average value and record it as P_{15}.

If the data collection interval is 20 hours or longer, set P_{241} equal to P_{15}. Otherwise, curve fit the collected power [P_{OM} (τ_{OM})] versus elapsed time (τ_{OM}) data from the data collection interval using the designated equation and determine the value of each curve fit constant *U, V, W,* and if applicable, *Y.* If the power data are generally decreasing with time over the data collection interval, use Equation 13.3–1; if the power data are generally increasing with time over the data collection interval, use Equation 13.3–2.

$$P_{OM}(\tau_{OM}) = U + V \cdot \exp\left(-\frac{W}{\tau_{OM}}\right) \qquad [13.3\text{-}1]$$

$$P_{OM}(\tau_{OM}) = U + \frac{V}{1 + \left[\frac{\tau_{OM}}{W}\right]^{Y}} \qquad [13.3\text{-}2]$$

Evaluate the equation for an elapsed time of 24 hours (τ_{OM} = 24 hours); make sure to express the elapsed time in the same units as used for the curve fit. If Equation 13.3–1 is used and the calculated value of power consumption at 24 hours is greater than P_{15}, then set P_{241} equal to P_{15}. If Equation 13.3–1 is used and the calculated value of power consumption at 24 hours is less than 0.85 × P_{15}, then set P_{241} equal to 0.85 × P_{15}. If Equation 13.3–2 is used and the calculated value of power consumption at 24 hours is less than P_{15}, then set P_{241} equal to P_{15}. If Equation 13.3–2 is used and the calculated value of power consumption at 24 hours is greater than 1.15 × P_{15}, then set P_{241} equal to 1.15 × P_{15}. Otherwise, set the off-mode power P_{241} equal to P_{OM}(24 hr). Also calculate the average outdoor room temperature for the data collection interval and record it as T_{CC1}.

Repeat the above steps, only now at an outdoor test room temperature that is 25 °F to 35 °F lower than T_{CC1}. Record the predicted power as P_{242} and the average outdoor temperature as T_{CC2}.

If *T00* is less than 75 °F, also integrate the power consumption of the residential central air conditioner over a 5-minute interval where the crankcase heater is off for the entire interval. The temperature in the outdoor test room may need to be increased to deactivate the heater for this test. Disconnecting the power to the heater is also permitted to temporarily disable it and obtain the off-mode power corresponding to no crankcase heater operation. The power integration period may be conducted in combination with the steps described in section 3.13.4.4. The temperature of the outdoor test room is allowed to vary during this 5-minute data collection interval. Calculate the average power from the integration interval and record it as P_{5F}.

The above-described integrated power consumption measurements—P_{241}, P_{242}, and P_{5F}—must include the power consumed by the low-voltage transformer and the low-voltage components connected to it.

3.13.4.5.2.1 For coil-only residential central air conditioners tested without an indoor blower installed and for residential central air conditioners tested and rated with a specific furnace or modular blower, reduce the overall system off-mode power measurements P_{241}, P_{242}, and P_{5F} by the power supplied to the components that are not part of the residential central air conditioner. If tested without an indoor blower, disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the full unloaded transformer over a 5-minute interval. If tested and rated with a specific furnace or a specific modular blower, measure only the power supplied to the furnace or modular blower while idle (*e.g.,* disconnect the low-voltage wiring for the components housed in the residential central air conditioner parts of the system from the transformer) and integrate this power over a 5-minute interval. Calculate the average power consumption of the fully unloaded transformer, idle furnace, or idle modular blower for the integration interval and designate it as P_X. Subtract this average power consumption (P_X) from the previously calculated overall system average power values to obtain the adjusted values. Calculate:

$$P_{CC1} = P_{241} - P_X\,,$$

$$P_{CC2} = P_{242} - P_X\,, \text{ and}$$

$$P_{NC} = P_{5F} - P_X\,.$$

3.13.4.5.2.2 For blower-coil residential central air conditioners, set $P_{CC1} = P_{241}$, $P_{CC2} = P_{242}$, and $P_{NC} = P_{5F}$.

3.13.5 For residential central air conditioners having a compressor crankcase heater that is regulated using only local control, conduct the following off-mode test.

3.13.5.1 Configure the controls of the residential central air conditioner to mimic the operating mode as if connected to a building thermostat set to the OFF position.

3.13.5.2 Obtain and maintain an outdoor room temperature that is any temperature between 60 °F and 70 °F. Collect data over each complete ON + OFF cycle of the crankcase heater, from heater initiation to heater initiation. Integrate the power consumption of the residential central air conditioner and record outdoor room temperature during each complete cycle. Calculate the average power and average outdoor room temperature from each ON + OFF complete cycle and record them as P_{LC1} and T_{CC1}, respectively. The elapsed time between the start of the first crankcase heater ON cycle and the test termination must be a minimum of 3 hours. Terminate the test when P_{LC1} changes by 1 watt or less for consecutive cycles and the outdoor temperature changes 2 °F or less over the entire interval required for the final two ON + OFF cycles. As an alternative to waiting until this test termination criteria is satisfied, the manufacturer can choose to terminate the test when at least three consecutive ON + OFF cycles occur where the average power from each cycle is less than the average power from the prior cycle and the outdoor temperature changes 2 °F or less over the entire interval required for the final three ON + OFF cycles. Save the P_{LC1} and T_{CC1} from the final cycle. Repeat these steps, only now at an outdoor test room temperature that is 25 °F to 35 °F lower than T_{CC1}. Record the average values from the final ON + OFF complete cycle as P_{LC2} and T_{CC2}. The integrated power consumption measurements must include the power consumed by the low-voltage transformer and the low-voltage components connected to it.

3.13.5.3 For coil-only residential central air conditioners tested without an indoor blower installed and for residential central air conditioners tested with a specific furnace or modular blower, reduce the overall system off-mode power measurement—P_{LC1} and P_{LC2}—by power supplied to the components that are not part of the residential central air conditioner. If tested without an indoor blower, disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the fully unloaded transformer over a 5-minute interval. If tested and rated with a specific furnace or specific modular blower, measure only the power supplied to the furnace or modular blower while idle (*i.e.,* disconnect the low-voltage wiring for the components housed in the residential central air conditioner parts of the system from the transformer) and integrate this power over a 5-minute interval. Calculate the average

power consumption of the fully unloaded transformer, idle furnace, or idle modular blower for the integration interval and designate it as P_X. Subtract this average power consumption from the previously calculated overall system average power values to obtain the adjusted values. Calculate:

$$P_{CC1} = P_{LC1} - P_X \text{ and}$$

$$P_{CC2} = P_{LC2} - P_X .$$

3.13.5.4 For blower-coil residential central air conditioners, set $P_{CC1} = P_{LC1}$ and $P_{CC2} = P_{LC2}$.

3.13.6 For residential central air conditioners having a compressor crankcase heater that is regulated using both local and global control, conduct the following off-mode test.

3.13.6.1 Configure the controls of the residential central air conditioner to mimic the operating mode as if connected to a building thermostat set to the OFF position. If the manufacturer-provided *T00* is greater than or equal to 75 °F, *T00* and *T100* are deemed verified; conduct the testing specified in section 3.13.5 to determine P_{CC1}, T_{CC1}, P_{CC2}, and T_{CC2}. Otherwise, first evaluate *T00* and *T100* as described in section 3.13.4.4. In conducting the procedure specified in section 3.13.4.4, either temporarily disable the local control or confirm that the lab-derived values for *T00* and *T100* correspond to the global control and not the local control of the crankcase heater. Thereafter, determine P_{CC1}, T_{CC1}, P_{CC2}, and T_{CC2}, as specified in section 3.13.5, only now conducting the first multiple ON + OFF cycle test at an outdoor temperature between *T00* and *T00* − 10 °F, rather than between 60 °F and 70 °F.

3.13.6.2 If *T00* is less than 75 °F, also integrate the power consumption of the residential central air conditioner over a 5-minute interval where the crankcase heater is off for the entire interval. The temperature in the outdoor test room may need to be increased to deactivate the heater for this test. Disconnecting the power to the heater is also permitted to temporarily disable it and obtain the off-mode power corresponding to no crankcase heater operation. The power integration period may be conducted in combination with the steps described in section 3.13.4.4. The temperature of the outdoor test room is allowed to vary during the 5-minute data collection interval. Calculate the average power from the integration interval and record it as P_{5F}. This quantity, P_{5F}, must include the power consumed by the low-voltage transformer and the low-voltage components connected to it.

3.13.6.2.1 For coil-only residential central air conditioners tested without an indoor blower installed and for residential central air conditioners tested with a specific furnace or modular blower, reduce P_{5F} by the average power determined from the 5-minute power integration test described in 3.13.5.3 that corresponds to the fully unloaded transformer, idle furnace, or idle modular blower (P_X). Record this adjusted value as P_{NC}.

3.13.6.2.2 For blower-coil residential central air conditioners, set $P_{NC} = P_{5F}$.

3.13.7 For heat pumps having a compressor crankcase heater whose on/off operation is either unregulated or regulated using only global control, conduct the following off-mode test.

3.13.7.1 Configure the controls of the heat pump to mimic the operating mode as if connected to a building thermostat that is set to the COOL mode but whose temperature setpoint is satisfied. Wait at least 2 minutes.

3.13.7.2 If the compressor crankcase heater is unregulated and therefore operates continuously when the unit is sitting idle, assign *T00* = *T100* = 75 °F. Skip to section 3.13.7.5.

3.13.7.3 If the compressor crankcase heater is regulated using global control, conduct the following steps. If the manufacturer-provided *T00* is greater than or equal to 75 °F, *T00* and *T100* are deemed verified; skip to section 3.13.7.5. Otherwise, first evaluate *T00* and *T100* as described in section 3.13.7.4.

3.13.7.4 If the compressor crankcase heater is regulated using global control and the manufacturer-provided *T00* is less than 75 °F, verify or determine *T00* and *T100* as specified in section 3.13.4. 4.

3.13.7.5 If *T100* is less than 55 °F, calculate the off-mode power consumption as designated for a heat pump not having a crankcase heater, as per Section 3.13.3. Otherwise, for crankcase heaters that are the fixed output type, conduct the average power consumption measurement(s) described in 3.13.7.5.1. For crankcase heaters that are the self-regulating type, conduct the average power consumption measurements described in 3.13.7.5.2.

3.13.7.5.1 If the crankcase heater is a fixed output type, integrate the power consumption of the heat pump over a 5-minute interval when the crankcase heater is on continuously. The temperature in the outdoor test room may need to be lowered to activate the heater for this test. This integration period may be conducted in combination with the steps described in section 3.13.4.4. The temperature of the outdoor test room is allowed to vary during the 5-minute data collection interval. Calculate the average power from the integration interval and record it as P_{5N}.

3.13.7.5.2 If the crankcase heater is a self-regulating type, maintain the outdoor room temperature at a nominally steady value that is between 70 °F and 75 °F or between *T100* − 3 °F and *T100* − 8 °F, whichever is lower, for at least 15 minutes prior to beginning a data collection interval. Also, for at least 5 minutes prior to the start of a data collection interval, operate with the crankcase heater on. Then, with the crankcase heater remaining on continuously, record the power consumption of the heat pump and the outdoor room temperature at equal time intervals that each span 5 minutes or less. Discontinue the data collection when the outdoor room temperature varies 2 °F or less over at least a 3-hour interval; do not collect data for more than 24 hours. From power data recorded during the last 15 minutes of the data collection interval, calculate an average value and record it as P_{15}.

If the data collection interval is 20 hours or longer, set P_{241} equal to P_{15}. Otherwise, curve fit the collected data, determine the curve fit constants, and evaluate the power quantity P_{241} and the average outdoor room temperature T_{CC1} as specified in section 3.13.4.5.2. Repeat these steps, only now at an outdoor test room temperature that is 7 °F to 12 °F lower than T_{CC1}. Record the power quantity as P_{242} and the average outdoor temperature as T_{CC2}.

3.13.7.6 Integrate the power consumption of the heat pump over a 5-minute interval where the crankcase heater is off for the entire interval. The temperature in the outdoor test room may need to be increased to deactivate the heater for this test. Disconnecting the power to the heater to temporarily disable it is also permitted. The integration period may be conducted in combination with the steps described in section 3.13.4.4. The temperature of the outdoor test room is allowed to vary during this 5-minute data collection interval. Calculate the average power from the integration interval and record it as P_{5FC}.

Reconfigure the controls of the heat pump to mimic the operating mode if connected to a building thermostat that is set to the HEAT mode but whose temperature setpoint is satisfied. Wait at least 2 minutes. Then integrate the power consumption of the heat pump over a 5-minute interval where the crankcase heater is off for the entire interval. Calculate the average power from the integration interval and record it as P_{5FH}. Calculate the mean of the two average power measurements where the crankcase heater was off and designate the average value as $P_{5F} = ([P_{5FC} + P_{5FH}]/2)$.

3.13.7.7 The integrated power consumption measurements must include the power consumed by the low-voltage transformer and the low-voltage components connected to it.

3.13.7.8 For coil-only heat pumps tested without an indoor blower installed and for heat pumps tested with a specific furnace or modular blower, reduce the overall system off-mode power measurements—P_{5N}, P_{5FC}, and P_{5F} or P_{241}, P_{242}, P_{5FC}, and P_{5F}—by power supplied to the components not part of the heat pump. If tested without an indoor blower, disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the fully unloaded transformer over a 5-minute interval. If tested with a specific furnace or specific modular blower, measure only the power supplied to the furnace or modular blower while idle (*e.g.,* disconnect the low-voltage wiring for the components housed in the heat pump parts of the system) and integrate this power over a 5-minute interval. Calculate the average power consumption of the fully unloaded transformer, idle furnace, or idle modular blower for the integration interval and designate it as P_X. Subtract this average power consumption from the previously calculated overall system average power values to obtain the adjusted values. For heat pumps having a fixed-output type crankcase heater, calculate:

$$P_{CC} = P_{5N} - P_X,$$

$$PC_{NC} = P_{5FC} - P_X \text{, and}$$

$$P_{NC} = P_{5F} - P_X .$$

For heat pumps having a self-regulating type crankcase heater, calculate:

$$P_{CC1} = P_{241} - P_X ,$$

$$P_{CC2} = P_{242} - P_X ,$$

$$PC_{NC} = P_{5FC} - P_X \text{, and}$$

$$P_{NC} = P_{5F} - P_X .$$

3.13.7.9 For blower-coil heat pumps having a fixed output type crankcase heater, set $P_{CC} = P_{5N}$, $PC_{NC} = P_{5FC}$, and $P_{NC} = P_{5F}$. For blower-coil heat pumps having a self-regulating type crankcase heater, set $P_{CC1} = P_{241}$, $P_{CC2} = P_{242}$, $PC_{NC} = P_{5FC}$, and $P_{NC} = P_{5F}$.

3.13.8 For heat pumps having a compressor crankcase heater that is regulated using only local control, conduct the following off-mode test.

3.13.8.1 Configure the controls of the heat pump to mimic the operating mode if connected to a building thermostat that is set to the COOL mode with its temperature setpoint satisfied.

3.13.8.2 Obtain and maintain an outdoor room temperature that is between 64 °F and 66 °F. Collect data over each complete ON + OFF cycles of the crankcase heater, from heater initiation to heater initiation. Integrate the power consumption of the heat pump and record outdoor room temperature during each complete cycle. Calculate the average power and average outdoor room temperature from each ON + OFF complete cycle and record them as P_{LC} and T_{CC}, respectively. The elapsed time between the start of the first crankcase heater ON cycle and the test termination must be a minimum of 3 hours. Terminate the test when: (1) P_{LC} changes 1 watt or less for consecutive cycles, (2) the T_{CC} for each of the final two complete cycles is between 64 °F and 66 °F, and (3) the outdoor temperature changes 2 °F or less over the entire interval required for the final two ON + OFF cycles. As an alternative to waiting until these test termination criteria are satisfied, the manufacturer may choose to terminate the test when: (1) at least three consecutive ON + OFF cycles occur where the average power from each cycle is less than the average power from the prior cycle, (2) the T_{CC} for each of the final three complete cycles is between 64 °F and 66 °F, and (3) the outdoor temperature changes 2 °F or less over the entire interval required for the final three ON + OFF cycles. Save the P_{LC} from the final cycle.

3.13.8.3 Next, integrate the power consumption of the heat pump over a 5-minute interval where the crankcase heater is off for the entire interval. Take whatever steps are needed to deactivate the heater for this test. Disconnecting the power to the heater is permitted. The temperature of the outdoor test room is allowed to vary during this 5-minute data collection interval. Calculate the average power from the integration interval and record it as P_{5FC}.

Reconfigure the controls of the heat pump to mimic the operating mode as if connected to a building thermostat that is set to the HEAT mode but whose temperature setpoint is satisfied. Wait at least 2 minutes. Then, integrate the power consumption of the heat pump over a 5-minute interval where the crankcase heater is off for the entire interval. Calculate the average power from the integration interval and record it as P_{5FH}. Calculate the mean of the two average power measurements where the crankcase heater was off and designate this mean value as $P_{5F} = [(P_{5FC} + P_{5FH})/2]$.

3.13.8.4 The integrated power consumption measurements specified in sections 3.13.8.2 and 3.13.8.3 must include the power consumed by the low-voltage transformer and the low-voltage components connected to it.

3.13.8.5 For coil-only heat pumps tested without an indoor blower installed and for heat pumps tested with a specific furnace or modular blower, reduce the overall system off-mode power measurements—P_{LC}, P_{5FC}, and P_{5F}—by power supplied to the components that are not part of the heat pump. If tested without an indoor blower, disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the fully unloaded transformer over a 5-minute interval. If tested with a specific furnace or specific modular blower, measure only the power supplied to the furnace or modular blower while idle (*e.g.,* disconnect the low-voltage wiring for the components housed in the heat pump parts of the system) and integrate this power over a 5-minute interval. Calculate the average power consumption of the fully unloaded transformer, idle furnace, or idle modular blower for the integration interval and designate it as P_X. Subtract this average power consumption from the previously calculated overall system average power values to obtain the adjusted values. Calculate:

$$P_{CC} = P_{LC} - P_X ,$$

$$PC_{NC} = P_{5FC} - P_X \text{, and}$$

$$P_{NC} = P_{5F} - P_X .$$

3.13.8.6 For blower-coil heat pumps, set $P_{CC} = P_{LC}$, $PC_{NC} = P_{5FC}$, and $P_{NC} = P_{5F}$.

3.13.9 For heat pumps having a compressor crankcase heater that is regulated using both local and global control, conduct the following off-mode test.

3.13.9.1 Configure the controls of the heat pump to mimic the operating mode as if connected to a building thermostat that is set to the COOL mode and its temperature setpoint is satisfied.

3.13.9.2 If the manufacturer-provided *T00* is greater than or equal to 75 °F, *T00* and *T100* are deemed verified; conduct the testing specified in section 3.13.8 to determine P_{CC}, PC_{NC}, and P_{NC}. Otherwise, first evaluate *T00* and *T100* as described in section 3.13.7.4. In conducting the procedure specified in section 3.13.7.4, take steps to either temporarily disable the local control or to confirm that the lab-derived values for *T00* and *T100* correspond to the global thermostatic control and not the local thermostatic control. Thereafter, determine P_{CC}, PC_{NC}, and P_{NC} as specified in section 3.13.8, only now conducting the ON + OFF complete cyclic test at an average outdoor temperature that is within ±1 °F of the quantity ½ × [55 °F + (*T00* + *T100*)/2], rather than a value that is between 64 °F and 66 °F.

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4.2.6 Off-mode seasonal power and energy consumption calculations.

4.2.6.1 Off-mode seasonal power consumption for the shoulder season, *P1.* For residential central air conditioners and heat pumps, the off-mode power consumption for the shoulder seasons is a single value that applies for all locations. Calculate *P1* as specified in 4.2.6.1.1 to 4.2.6.1.3.4.

4.2.6.1.1 Residential central air conditioners and heat pumps that do not have a compressor crankcase heater. For residential central air conditioners and heat pumps not having a compressor crankcase heater, assign *P1* as specified in sections 3.13.2 and 3.13.3, respectively.

4.2.6.1.2 Residential central air conditioners that have a compressor crankcase heater. Evaluate *P1* using

$$P1 = \frac{P1(57) + P1(62) + P1(67) + P1(72)}{4} \text{, rounded to the nearest integer watt,}$$

where the off-mode power values for the four outdoor temperatures depend on whether the heater is thermostatically controlled and, in some cases, whether the crankcase heater is a fixed output type or a self-regulating type. The thermostatic control may qualify as global, local, or both—*see* definitions 1.53 and 1.54. The most common example of global control is a crankcase heater that is regulated by an outdoor temperature thermostat.

4.2.6.1.2.1 Residential central air conditioner crankcase heater is unregulated. For fixed-output type crankcase heaters, set $P1 = P_{CC}$, as determined in section 3.13.4.5.1 and its subsections, and round to the nearest

integer watt. For self-regulating type crankcase heaters, evaluate:

$$P1(T_j) = \frac{(P_{CC2} - P_{CC1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CC1}$$, where,

P_{CC1}, P_{CC2}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.4.5.2 and its subsections.

4.2.6.1.2.2 Residential central air conditioner crankcase heater is regulated using only global control.

If the residential central air conditioner's *T00* is greater than or equal to 75 °F, determine the shoulder season off-mode power consumption as specified in sections 4.2.6.1.2 and 4.2.6.1.2.1. If *T00* is less than 75 °F, use the following. For fixed-output type crankcase heaters, calculate

$$P_{CH} = P_{CC} - P_{NC}$$

$$P1(T_j) = P_{NC} + F_{CC}(T_j) \cdot P_{CH}$$, where

P_{CC} and P_{NC} are determined as specified in section 3.13.4.5.1 and its subsections, and

$$F_{CC}(T_j) = \begin{cases} 0, if\ T_j \geq T100 \\ 1 - \frac{(T_j - T00)}{(T100 - T00)}, if\ T00 < T_j < T100 \\ 1, if\ T_j \leq T00 \end{cases}$$, where

T00 and *T100* are determined as specified in 3.13.4.3 or 3.13.4.4.

For self-regulating type crankcase heaters, calculate:

$$P_{CH1} = P_{CC1} - P_{NC}$$

$$P_{CH2} = P_{CC2} - P_{NC}$$

$$P1(T_j) = P_{NC} + F_{CC}(T_j)\left[\frac{(P_{CH2} - P_{CH1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CH1}\right]$$, where

P_{CC1}, P_{CC2}, P_{NC}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.4.5.2 and its subsections, and $F_{CC}(T_j)$ is calculated as shown above.

4.2.6.1.2.3 Residential central air conditioner crankcase heater is regulated using only local control.

For both fixed-output type and self-regulating type crankcase heaters, calculate

$$P1(T_j) = \frac{(P_{CC2} - P_{CC1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CC1}$$, where

P_{CC1}, P_{CC2}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.5.

4.2.6.1.2.4 Residential central air conditioner crankcase heater is regulated using both global and local control. If the heat pump's *T00* is greater than or equal to 75 °F, determine the off-mode power consumption as specified in sections 4.2.6.1.2 and 4.2.6.1.2.3. If *T00* is less than 75 °F, use the following. For both fixed-output type and self-regulating type crankcase heaters, calculate

$$P_{CH1} = P_{CC1} - P_{NC}$$

$$P_{CH2} = P_{CC2} - P_{NC}$$

$$P1(T_j) = P_{NC} + F_{CC}(T_j)\left[\frac{(P_{CH2} - P_{CH1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CH1}\right], \text{ where}$$

P_{CC1}, P_{CC2}, P_{NC}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.6 and $F_{CC}(T_j)$ is calculated as shown in section 4.2.6.1.2.2.

4.2.6.1.3 Heat pumps that have a compressor crankcase heater. The calculations for the heat pump's shoulder season off-mode power value depends on whether the heater is thermostatically controlled and, in some cases, whether the crankcase heater is a fixed-output type or a self-regulating type. The thermostatic control may qualify as global, local, or both—*see* definitions 1.53 and 1.54.

4.2.6.1.3.1 Heat pump crankcase heater is unregulated. For fixed-output type crankcase heaters, evaluate:

$$P1 = (P_{CC} - PC_{NC}) + P_{NC}, \text{ rounded to the nearest integer watt, where}$$

$\underline{P_{CC}}$, $\underline{PC_{NC}}$, and $\underline{P_{NC}}$ are determined as specified in section 3.13.7 and its subsections.

P_{CC}, PC_{NC}, and P_{NC} are determined as specified in section 3.13.7 and its subsections.

For self-regulating type crankcase heaters, evaluate:

$$P1 = \frac{P1(57) + P1(62) + P1(67) + P1(72)}{4}, \text{ rounded to the nearest integer watt, where}$$

$$P1(T_j) = \frac{(P_{CH2} - P_{CH1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CH1} + P_{NC},$$

$$P_{CH1} = P_{CC1} - PC_{NC}$$

$$P_{CH2} = P_{CC2} - PC_{NC}, \text{ and}$$

P_{CC1}, P_{CC2}, PC_{NC}, P_{NC}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.7 and its subsections.

4.2.6.1.3.2 Heat pump crankcase heater is regulated using only global control. If the heat pump's *T00* is greater than or equal to 75 °F, determine the shoulder season off-mode power consumption as specified in section 4.2.6.1.3.1. If the heat pump's *T100* is less than 55 °F, determine the shoulder season off-mode power consumption as designated for a heat pump not having a crankcase heater, as per section 4.2.6.1.1. If *T00* is less than 75 °F and *T100* is greater than 55 °F, use the following:

$$P1 = \frac{P1(57) + P1(62) + P1(67) + P1(72)}{4}, \text{ rounded to the nearest integer watt.}$$

For fixed-output type crankcase heaters, calculate

$$P_{CH} = P_{CC} - PC_{NC}$$

$$P1(T_j) = P_{NC} + F_{CC}(T_j) \cdot P_{CH}, \text{ where}$$

P_{CC}, PC_{NC}, and P_{NC} are determined as specified in Section 3.13.7 and its subsections, and

$$F_{CC}(T_j) = \begin{cases} 0, & if\ T_j \geq T100 \\ 1 - \dfrac{(T_j - T00)}{(T100 - T00)}, & if\ T00 < T_j < T100 \\ 1, & if\ T_j \leq T00 \end{cases}$$, where

T00 and *T100* are determined as specified in 3.13.7.3 or 3.13.7.4.

For self-regulating type crankcase heaters, calculate:

$$P_{CH1} = P_{CC1} - PC_{NC}$$

$$P_{CH2} = P_{CC2} - PC_{NC}$$

$$P1(T_j) = P_{NC} + F_{CC}(T_j)\left[\frac{(P_{CH2} - P_{CH1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CH1}\right]$$, where

P_{CC1}, P_{CC2}, PC_{NC}, P_{NC}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.7 and its subsections, and $F_{CC}(T_j)$ is calculated as shown above.

4.2.6.1.3.3 Heat pump crankcase heater is regulated using local control. For both fixed-output type and self-regulating type crankcase heaters, calculate

$$P1 = (P_{CC} - PC_{NC}) + P_{NC}$$, where

P_{CC}, PC_{NC}, and P_{NC} are determined as specified in section 3.13.8 and its subsections.

4.2.6.1.3.4 Heat pump crankcase heater is regulated using both global and local control. If the heat pump's *T00* is greater than or equal to 75 °F, determine the shoulder season off-mode power consumption as specified in section 4.2.6.1.3.1. If the heat pump's *T100* is less than 55 °F, determine the shoulder season off-mode power consumption as designated for a heat pump not having a crankcase heater, as per section 4.2.6.1.1. If *T00* is less than 75 °F and *T100* is greater than 55 °F, use the following. For both fixed-output type and self-regulating type crankcase heaters, calculate

$$P_{CH} = P_{CC} - PC_{NC}$$

$$P1 = P_{NC} + F_{CC}(T_j) \cdot P_{CH}$$, where

P_{CC}, PC_{NC}, and P_{NC} are determined as specified in section 3.13.9 and its subsections, and $F_{CC}(T_j)$ is calculated as shown in section 4.2.6.1.3.2.

4.2.6.2 Off-mode seasonal power consumption for residential central air conditioners during the heating season, *P2.* For residential central air conditioners, the off-mode seasonal power consumption for the heating season is calculated as a single value that depends on the bin weather distribution. Refer to Table 18 for the fractional bin hour distribution, n_j/N, for the six generalized climatic regions depicted in Figure 2. The calculation of *P2,* in addition, varies for different types of systems. For residential central air conditioners having a compressor crankcase heater, for example, the off-mode power consumption depends on whether the heater is thermostatically controlled and, in some cases, whether the crankcase heater is a fixed-output type or a self-regulating type. The thermostatic control may qualify as global, local, or both—*see* definitions 1.53 and 1.54. The most common example of global control is a crankcase heater that is regulated by an outdoor temperature thermostat. In all cases, round *P2* to the nearest integer watt.

Heat pumps do not have a *P2* rating because they are either in an active mode or a standby mode during the heating season, with their seasonal heating performance being represented by their HSPF rating.

4.2.6.2.1 Residential central air conditioners that do not have a compressor crankcase heater. For residential central air conditioners and heat pumps not having a compressor crankcase heater, assign *P2* as specified in section 3.13.2.

4.2.6.2.2 Residential central air conditioners that have a compressor crankcase heater that is unregulated. For fixed-output type crankcase heaters, set $P2 = P_{CC}$, as determined in sections 3.13.4.2 and 3.13.4.5 and their subsections. For self-regulating type crankcase heaters, evaluate:

$$P2 = \sum_{j}^{J}\left[\frac{n_j}{N} \cdot P2(T_j)\right]$$, where

$$P2(T_j) = \frac{(P_{CC2} - P_{CC1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CC1}$$, where,

P_{CC1}, P_{CC2}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.4.5 and its subsections.

4.2.6.2.3 Residential central air conditioners that have a compressor crankcase heater that is regulated using global control. If the residential central air conditioner's *T00* is greater than or equal to 65 °F, determine the heating season off-mode power consumption as specified in section 4.2.6.2.2. If *T00* is less than 65 °F, use the following:

$$P2 = P_{NC} + \sum_{j}^{J}\left[\frac{n_j}{N} \cdot F_{CC}(T_j) \cdot P_{CH}(T_j)\right]$$

For fixed-output type crankcase heaters,

$$P_{CH}(T_j) = P_{CC} - P_{NC}\text{, for all outdoor bin temperatures, } T_j.$$

P_{CC} and P_{NC} are determined as specified in section 3.13.4.5 and its subsections, and

$$F_{CC}(T_j) = \begin{cases} 0, & if\ T_j \geq T100 \\ 1 - \dfrac{(T_j - T00)}{(T100 - T00)}, & if\ T00 < T_j < T100 \\ 1, & if\ T_j \leq T00 \end{cases}\text{, where}$$

T00 and *T100* are determined as specified in 3.13.4.3 or 3.13.4.4.

For self-regulating type crankcase heaters,

$$P_{CH}(T_j) = \frac{(P_{CH2} - P_{CH1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CH1}\text{, where}$$

$$P_{CH1} = P_{CC1} - P_{NC}\text{, and}$$

$$P_{CH2} = P_{CC2} - P_{NC}\text{, where}$$

P_{CC1}, P_{CC2}, P_{NC}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.4.5 and its subsections, and $F_{CC}(T_j)$ is calculated as shown above.

4.2.6.2.4 Residential central air conditioners that have a compressor crankcase heater that is regulated using local control. For both fixed-output type and self-regulating type crankcase heaters, calculate:

$$P2 = \sum_{j}^{J}\left[\frac{n_j}{N} \cdot P2(T_j)\right]\text{, where}$$

$$P2(T_j) = \frac{(P_{CC2} - P_{CC1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CC1}.$$

P_{CC1}, P_{CC2}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.5 and its subsections.

4.2.6.2.5 Residential central air conditioners that have a compressor crankcase heater that is regulated using both global and local control. If the heat pump's *T00* is greater than or equal to 65 °F, determine the off-mode power consumption as specified in section 4.2.6.2.4. If *T00* is less than 65 °F, use the following. For both fixed-output type and self-regulating type crankcase heaters,

$$P2 = P_{NC} + \sum_{j}^{J}\left[\frac{n_j}{N} \cdot F_{CC}(T_j) \cdot P_{CH}(T_j)\right]\text{, where}$$

$$P_{CH}(T_j) = \frac{(P_{CH2} - P_{CH1})}{(T_{CC2} - T_{CC1})}(T_j - T_{CC1}) + P_{CH1}\text{, and}$$

$$P_{CH1} = P_{CC1} - P_{NC}$$

$$P_{CH2} = P_{CC2} - P_{NC}.$$

P_{CC1}, P_{CC2}, P_{NC}, T_{CC1}, and T_{CC2} are determined as specified in section 3.13.6 and its subsections, and $F_{CC}(T_j)$ is calculated as shown in section 4.2.6.2.3.

4.2.6.3 National-average off-mode power rating. For residential central air conditioners, combine the off-mode power rating for the shoulder season, *P1,* with the off-mode seasonal power rating for the heating season, *P2,* by weighting these ratings with respect to the lengths of respective national average seasons: 739 hours for the shoulder seasons and 5,216 hours for the heating season.

For residential central air conditioners:

$PW_{OFF} = PW_{OFF} = 0.124 \times P1 + 0.876 \times P2$

For heat pumps, assign $PW_{OFF} = P1$

4.2.6.4 Off-mode seasonal energy consumption.

4.2.6.4.1 For the shoulder seasons. Calculate the off-mode energy consumption for the shoulder season, *E1,* using

$E1 = P1 \cdot SSH$

where *P1* is determined as specified in section 4.2.8.1 and the *SSH* are provided in Table 19 for the six generalized climatic regions along with the national average rating values.

TABLE 20—REPRESENTATIVE COOLING AND HEATING LOAD HOURS AND THE CORRESPONDING SET OF SEASONAL HOURS FOR EACH GENERALIZED CLIMATIC REGION

Climatic region	Cooling load hours CLH_R	Heating load hours HLH_R	Cooling season hours CSH_R	Heating season hours HSH_R	Shoulder season hours SSH_R
I	2400	750	6731	1826	203
II	1800	1250	5048	3148	564
III	1200	1750	3365	4453	942
IV	800	2250	2244	5643	873
Rating Values	1000	2080	2805	5216	739
V	400	2750	1122	6956	682
VI	200	2750	561	6258	1941

4.2.6.4.2 For the heating season—residential central air conditioners only. Calculate the off-mode energy consumption of a residential central air conditioner during the heating season, *E2,* using

$E2 = P2 \cdot HSH$

where *P2* is determined as specified in section 4.2.6.2 and the HSH are provided in Table 19 for the six generalized climatic regions along with the national average rating values.

* * * * *

4.3.1 Calculation of actual regional annual performance factors (APF_A) for a particular location and for each standardized design heating requirement.

$$APF_A = \frac{CLH_A \cdot \dot{Q}_c^k(95) + HLH_A \cdot DHR \cdot C}{\frac{CLH_A \cdot \dot{Q}_c^k(95)}{SEER} + \frac{HLH_A \cdot DHR \cdot C}{HSPF} + P1 \cdot SSH + P2 \cdot HSH}$$

where,

CLH_A = the actual cooling hours for a particular location as determined using the map given in Figure 3, hr.

$\dot{Q}_c^k(95)$ = the space cooling capacity of the unit as determined from the A or A_2 Test, whichever applies, Btu/h.

HLH_A = the actual heating hours for a particular location as determined using the map given in Figure 2, hr.

DHR = the design heating requirement used in determining the HSPF; refer to section 4.2 and definition 1.22, Btu/h.

C = defined in section 4.2 following Equation 4.2–2, dimensionless.

SEER = the seasonal energy efficiency ratio calculated as specified in section 4.1, Btu/W · h.

HSPF = the heating seasonal performance factor calculated as specified in section 4.2 for the generalized climatic region that includes the particular location of interest (*see* Figure 2), Btu/W·h. The HSPF should correspond to the actual design heating requirement (DHR), if known. If it does not, it may correspond to one of the standardized design heating requirements referenced in section 4.2.

P1 = the off-mode seasonal power consumption for the shoulder season, as determined in section 4.2.6.1, W, and

P2 = the off-mode seasonal power consumption for the heating season, as determined in section 4.2.6.2, W.

Evaluate the *HSH* using

$$HSH = \frac{HLH \cdot (65 - T_{OD})}{\sum_{j=1}^{J}(65 - T_j) \cdot \frac{n_j}{N}}$$

Where T_{OD} and n_j/N are listed in Table 19 and depend on the location of interest relative to Figure 2. For the six generalized climatic regions, this equation simplifies to the following set of equations:

Region I $HSH = 2.4348 \times HLH$
Region II $HSH = 2.5182 \times HLH$
Region III $HSH = 2.5444 \times HLH$
Region IV $HSH = 2.5078 \times HLH$
Region V $HSH = 2.5295 \times HLH$
Region VI $HSH = 2.2757 \times HLH$

Evaluate the shoulder season hours using

$SSH = 8760 - (CSH + HSH)$

where,

CSH = the cooling season hours calculated using $CSH = 2.8045 \times CLH$.

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4.5 Energy Efficiency Ratio (EER) Calculations.

Calculate the energy efficiency ratio using,

$$EER = \frac{\text{Total Cooling Capacity}}{\text{Total Electrical Power Consumption}}$$

$$= \frac{\dot{Q}_c^k(T)}{\dot{E}_c^k(T)}$$

where $\dot{Q}_c^k(T)$ and $\dot{E}_c^k(T)$ are the space cooling capacity and electrical power consumption determined from the 30-minte data collection interval of the same steady-state wet coil cooling mode test and calculated as specified in section 3.3. To help differentiate among the resulting EER values, add the letter identification for each steady-state test as a subscript (e.g., EER_{A_2}) These letter identifiers are noted in Tables 3, 4, 5 and 6 and can be any of the following: A, A_2, A_1, B, B_2, B_1, E_V, and F_1.

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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2009–BT–STD–0018]

RIN 1904–AC00

Energy Conservation Standards for Metal Halide Lamp Fixtures: Public Meeting and Availability of the Preliminary Technical Support Document

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on: the equipment classes that DOE plans to analyze for purposes of establishing energy conservation standards for metal halide lamp fixtures (MHLFs); the analytical framework, models, and tools that DOE is using to evaluate standards for this equipment; the results of preliminary analyses DOE performed for this equipment; and potential energy conservation standard levels derived from these analyses that DOE could consider for this equipment. DOE encourages written comments on these subjects. To inform interested parties and facilitate this process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/metal_halide_lamp_fixtures.html.*

DATES: DOE will hold a public meeting on Monday, April 18, 2011 beginning at 9 a.m. in Washington, DC. The agenda for the public meeting will cover this energy conservation standards rulemaking for MHLFs. Any person requesting to speak at the public meeting should submit such a request, along with an electronic copy of the statement to be given at the public meeting, before Monday, April 11, 2011. Written comments are welcome, especially following the public meeting, and should be submitted by May 16, 2011.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/metal_halide_lamp_fixtures.html.* Participants are responsible for ensuring their systems are compatible with the webinar software.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed. Interested persons may submit comments, identified by docket number EERE–2009–BT–STD–0018, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: MHLF-2009-STD-0018@ee.doe.gov.* Include EERE–2009–BT–STD–0018 and/or RIN 1904–AC00 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Public Meeting for Metal Halide Lamp Fixtures, EERE–2009–BT–STD–0018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number.

Docket: Access to the docket to review background documents, the transcript of the public meeting, or comments received is available at the U.S. Department of Energy, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday,

except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information to Dr. Tina Kaarsberg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 287–1393. E-mail: *Tina.Kaarsberg@ee.doe.gov*. In the Office of General Counsel, contact Mr. Ari Altman, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 287–6307. E-mail: *Ari.Altman@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. History of Standards Rulemakings for Metal Halide Lamp Fixtures and Regulatory Authority
A. Background
B. Current Rulemaking Process
II. Summary of the Analyses
A. Engineering Analysis
B. Energy Use Characterization
C. Markups to Determine Installed Price
D. Life-Cycle Cost and Payback Period Analyses
E. National Impact Analysis

I. History of Standards Rulemakings for Metal Halide Lamp Fixtures and Regulatory Authority

A. Background

Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Public Law 94–163, (42 United States Code (U.S.C.) 6291 *et seq.*) established an energy conservation program for major household appliances and industrial and commercial equipment. More specifically, Part B of Title III (42 U.S.C. 6291–6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." [1] Subsequent amendments to EPCA have given DOE the authority to regulate the energy efficiency of several additional kinds of equipment, including MHLFs, which are the focus of this document.

The following summarizes the pertinent legislative and regulatory history for MHLFs. DOE is conducting its first rulemaking cycle to review and consider amendments to the energy conservation standards in effect for MHLFs, as required under 42 U.S.C. 6295(hh)(2).

By way of background, on December 19, 2007, the President signed the Energy Independence and Security Act of 2007 (EISA 2007) which made numerous amendments to EPCA and directed DOE to undertake several new rulemakings for appliance energy conservation standards. (Pub. L. 110–140) The MHLF provisions, section 324 of EISA 2007, amended EPCA by:

- Inserting definitions pertaining to "metal halide ballast," [2] "metal halide lamp," [3] and "metal halide lamp fixtures" [4] (among others) into section 321 of EPCA (42 U.S.C. 6291(62), (63), and (64));
- Amending section 323(b) of EPCA to direct DOE to develop a test procedure for metal halide (MH) lamp ballasts based on the American National Standard Institute (ANSI) Standard C82.6–2005, *Ballasts for High-Intensity Discharge (HID) Lamps-Methods of Measurement* (42 U.S.C. 6293(b)(18));
- Amending section 324(a)(2) of EPCA by directing the Federal Trade Commission (FTC) to conduct a labeling rulemaking for MHLFs (42 U.S.C. 6294(a)(2)(C)); and
- Amending section 325 of EPCA by prescribing energy conservation standards for MHLFs, requiring that they contain ballasts that meet or exceed defined efficiency levels. Compliance with the EISA 2007-prescribed standards was required as of January 1, 2009. (42 U.S.C. 6295(hh)(1)) As stated in the statutory language, the Secretary is directed to publish a final rule no later than January 1, 2012 to determine whether the energy conservation standards established by EISA 2007 for MHLFs should be amended, with any amendment applicable to products manufactured on or after January 1, 2015. (42 U.S.C. 6295(hh)(2)(B))

The following statutory provisions are directly relevant to the energy conservation standards rulemaking for MHLFs. As amended by EISA 2007, EPCA regulates MHLFs designed to be operated with lamps rated greater than or equal to 150 watts (W), but less than or equal to 500 W by prescribing performance requirements for the MH lamp ballasts used in those MHLFs. Both MH lamps and ballasts are energy-using components of MHLFs. For this MH lamp wattage range, MHLFs must contain the ballasts described at 42 U.S.C. 6295(hh)(1)(A).

In addition to prescribing minimum efficiency requirements for the previously described MH lamp ballasts contained in MHLFs, EISA 2007 amended EPCA to exclude certain types of MH lamp fixtures from the statutorily prescribed energy conservation standards as described at 42 U.S.C. 6295(hh)(1)(B).

Pursuant to section 310 of EISA 2007, EPCA further directs DOE to incorporate standby mode and off mode energy use in any amended (or new) standard adopted after July 1, 2010. (42 U.S.C. 6295(gg)(3)) Because this energy conservation standards rulemaking must be completed by January 1, 2012, the requirement to incorporate standby mode and off mode energy use into the energy conservation standards analysis is applicable. The application of standby mode and off mode energy use in this rulemaking is discussed in detail in the TSD.

The following statutory provisions (and associated rulemakings) are related to MHLFs but are separate from the current standards rulemaking:

- In conjunction with energy conservation standards for MHLFs, EPCA required DOE to undertake a determination to see if energy conservation standards for High Intensity Discharge (HID) lamps (including MH lamps) would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(a)(1)) DOE completed the HID determination and published a final rule (75 FR 67975) on July 1, 2010 concluding that energy conservation standards for certain HID lamps are technologically feasible and economically justified.
- DOE completed a test procedure rulemaking for MH lamp ballasts, as required by EPCA through amendments from EISA 2007. (42 U.S.C. 6293(b)(18)) The final rule test procedure for MH lamp ballasts was published in the **Federal Register** on March 10, 2010. 75 FR 10950.
- The FTC is directed to conduct a labeling rulemaking as part of the requirements set forth by EISA 2007 for MHLFs. (42 U.S.C. 6294(a)(2)(C)) To this end, the FTC published a final rule in the **Federal Register** on July 9, 2008, amending 16 CFR part 305, "Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ('Appliance Labeling Rule')." 73 FR 39221. On October 23, 2008, the FTC

[1] For editorial reasons, upon codification in the U.S. Code, Part B of Title III was re-designated as Part A.

[2] "Metal halide ballast" means "a ballast used to start and operate metal halide lamps." (42 U.S.C. 6291(62)).

[3] "Metal halide lamp" means "a high intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors." (42 U.S.C. 6291(63)).

[4] "Metal halide lamp fixture" means "a light fixture for general lighting application designed to be operated with a metal halide lamp and a ballast for a metal halide lamp." (42 U.S.C. 6291(64)).

published in the **Federal Register** additional amendments to 16 CFR part 305 for MHLFs in the form of technical corrections. 73 FR 63066. Both final rules fulfilled the FTC's obligations under EISA 2007 pertaining to labeling requirements for MHLFs and MH lamp ballasts.

B. Current Rulemaking Process

On December 30, 2009, DOE published a notice announcing the availability of the framework document, "Energy Conservation Standards Rulemaking Framework Document for Metal Halide Lamp Fixtures," and a public meeting to discuss the proposed analytical framework for the rulemaking. 74 FR 69036. DOE also posted the framework document on its Web site describing the procedural and analytical approaches DOE anticipated using to evaluate the establishment of energy conservation standards for MHLFs. This document is available at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/pdfs/mh_ecs_framework.pdf.*

DOE held a public meeting on January 26, 2010, to describe the various rulemaking analyses DOE would conduct, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA); the methods for conducting them; and the relationship among the various analyses. Manufacturers, trade associations, and environmental advocates attended the meeting. The participants discussed multiple issues including the scope of covered MHLFs, test procedures, a system approach and ballast efficiency metric, DOE's engineering analysis, LCCs, efficiency levels, and energy savings.

Comments received since publication of the framework document have helped DOE identify and resolve issues involved in the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments DOE received.

II. Summary of the Analyses

DOE conducted in-depth technical analyses in the following areas for the MHLFs currently under consideration: (1) Engineering, (2) energy use characterization, (3) markups to determine product price, (4) LCC and PBP, and (5) national impact. The preliminary TSD presents the methodology and results of each analysis. The analyses are described in more detail below.

DOE conducted several other analyses that either support the five major analyses or are preliminary analyses that will be expanded in the Notice of Proposed Rulemaking (NOPR). These include the market and technology assessment; the screening analysis, which contributes to the engineering analysis; and the shipments analysis, which contributes to the NIA. DOE has begun some preliminary work on the manufacturer impact analysis and identified the methods to be used for the LCC subgroup analysis, the environmental assessment, the employment analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these in the NOPR.

A. Engineering Analysis

The engineering analysis establishes the relationship between manufacturer selling price and equipment efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. The engineering analysis identifies representative baseline models, which is the starting point for analyzing technologies that provide energy efficiency improvements. A baseline model refers to a model (or models) having features and technologies typically found in equipment currently offered for sale. The baseline model in each equipment class represents the characteristics of certain MHLFs in that class and, for fixtures already subject to energy conservation standards, is usually a model that just meets the current standard. Chapter 5 of the preliminary TSD discusses the engineering analysis.

B. Energy Use Characterization

The energy use characterization provides estimates of annual energy usage for MHLFs, which DOE uses in the LCC and PBP analyses and the NIA. DOE developed energy usage estimates for all of the equipment classes analyzed in the engineering analysis as the basis for its energy use estimates. Chapters 2 and 6 of the preliminary TSD provide detail on the energy use characterization.

C. Markups To Determine Installed Price

DOE derives the installed prices for equipment based on manufacturer markups, retailer markups, distributor markups, contractor markups, builder markups, and sales taxes. In deriving these markups, DOE has determined the distribution channels for product sales, the markup associated with each party in the distribution channels, and the existence and magnitude of differences between markups for baseline equipment (baseline markups) and for more efficient equipment (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the equipment markups at each step in the distribution channel. The overall incremental markup relates the change in the manufacturer sales price of higher efficiency models (the incremental cost increase) to the change in the retailer or distributor sales price. Chapters 2 and 7 of the preliminary TSD provide detail on the estimation of markups.

D. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total consumer expense for equipment over its lifetime. The LCC analysis compares the LCCs of equipment designed to meet possible energy conservation standards with the LCCs of equipment likely to be installed in the absence of standards. DOE determines LCCs by considering (1) Total installed cost to the purchaser (which consists of manufacturer selling price, sales taxes, distribution chain markups, and installation cost); (2) the operating expenses of the equipment (energy use and maintenance); (3) equipment lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of more efficient equipment through savings in the operating cost. PBP is equal to the change in total installed cost due to increased efficiency divided by the change in annual operating cost from increased efficiency. Chapters 2 and 8 of the preliminary TSD provide detail on the LCC and PBP analyses.

E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels). DOE calculated NES and NPV at each efficiency level for each candidate standard for MHLFs as the difference between a base-case forecast (without new standards) and the standards-case forecast (with standards). DOE determined national annual energy usage by multiplying the number of units in use (by vintage) by the average unit energy usage (also by vintage). Cumulative energy savings are the sum of the annual NES determined over a specified time period. The national NPV

is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, retirement rates (based on estimated product lifetimes), and estimates of changes in shipments and retirement rates in response to changes in product costs due to standards. Chapters 2 and 10 of the preliminary TSD provide detail on the NIA.

DOE consulted with interested parties on all of the analyses and invites further input on these topics. The preliminary analytical results are subject to revision following review and input from the public. A revised TSD will be made available upon issuance of a NOPR. The final rule will contain the final analysis results and be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD and be prepared to discuss its contents. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD. DOE is also interested in receiving information on other relevant issues that participants believe would affect energy conservation standards for this equipment or that DOE should address in the NOPR.

DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit comments and information in writing by May 16, 2011.

The public meeting and associated Webinar will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs, prices, market shares, or other commercial matters regulated by U.S. antitrust laws.

After considering all comments and additional information it receives from interested parties or through further analyses, DOE will prepare and publish in the **Federal Register** a NOPR. The NOPR will include proposed energy conservation standards for the equipment covered by the rulemaking. Members of the public will have an opportunity to submit written and oral comments on the proposed standards.

Issued in Washington, DC, on March 24, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–7585 Filed 3–31–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. NE132; Notice No. 33–11–01–SC]

Special Conditions: Turbomeca Arriel 2D Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Turbomeca SA model Arriel 2D engines. The engine model will have a novel or unusual design feature which is a 30-minute power rating. This rating is generally intended to be used for hovering at increased power for search and rescue missions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the added 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 May 2, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Engine and Propeller Directorate, *Attn:* Marc Bouthillier, Rules Docket (ANE 111), Docket No. NE132, 12 New England Executive Park, Burlington, Massachusetts 01803 5299. You may deliver two copies to the Engine and Propeller Directorate at the above address. You must mark your comments: Docket No. NE 132, 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: For technical questions concerning this proposed rule contact Marc Bouthillier, ANE–111, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7120; facsimile (781) 238–7199; e-mail *marc.bouthillier@faa.gov.* For legal questions concerning this proposed rule contact Vincent Bennett, ANE–7 Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; facsimile (781) 238–7055; e-mail *vincent.bennett@faa.gov.*

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 about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We will consider all comments we receive by 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 let you know we received your comments on this proposal, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 26, 2010, Turbomeca applied for type certification for a new model Arriel 2D turboshaft engine. This engine consists of an axial air intake, an axial compressor and a centrifugal compressor driven by a single-stage turbine, a direct-flow annular combustion chamber, and a single-stage free turbine which drives a reduction gear assembly located at the rear end. The accessory gearbox, located at the front end, is driven by the gas generator turbine.

The engine will incorporate a novel or unusual design feature, which is a 30-minute power rating. This rating was requested by the applicant to support rotorcraft search and rescue missions that require extensive operations at high power. This type of rating is generally associated with multi-engine

applications and has usually been named an all-engine-operating (AEO) rating. However, this model will be installed on a single engine rotorcraft, and the rating name for the purpose of this special condition is now 30-minute power rating. The number of times this new rating can be used during a flight is not intended to be limited.

The applicable airworthiness standards do not contain adequate or appropriate airworthiness standards to address this design feature. Therefore a special condition is necessary to apply additional requirements for rating definition, instructions for continued airworthiness (TCA) and endurance testing. The 30 minute time limit applies to each instance the rating is used, however there is no limit to the number of times the rating can be used during any one flight, and there is no cumulative time limitation. The ICA requirement is intended to address the unknown nature of actual rating usage and associated engine deterioration. The applicant is expected to make an assessment of the expected usage and publish ICA's and ALS limits in accordance with those assumptions, such that engine deterioration is not excessive. The endurance test requirement of 25 hours operation at 30 minute rating is similar to several special conditions issued over the past 20 years addressing the same subject. It must be noted that test time required for the takeoff rating, may not be counted toward the 25 hours of operation required for the 30 minute rating.

These special conditions contain the additional airworthiness standards necessary to establish a level of safety equivalent to the level that would result from compliance with the applicable standards of airworthiness in effect on the date of application.

Type Certification Basis

Under the provisions of 14 CFR 21.17(a) and 21.101(a), Turbomeca must show that the model Arriel 2D turboshafi engine meets the provisions of the applicable regulations in effect on the date of application, unless otherwise specified by the FAA. The current certification basis for engines in this model series varies, being either 14 CFR part 33, Amendment 14 or Amendment 15. Turbomeca proposes a certification basis of 14 CFR part 33, Amendment 15. In accordance with § 21.101(b), the FAA concurs with the Turbomeca proposal. Therefore, the certification basis for the Turbomeca Arriel 2D will be part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–15 inclusive. If the Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the model Arriel 2D turboshaft engine, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined by 14 CFR 11.19, in accordance with 14 CFR 11.38, which become part of the type certification basis in accordance with § 21.17(b)(2). Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include another related model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Turbomeca model Arriel 2D turboshaft engine will incorporate a novel or unusual design feature which is a 30-minute power rating, for use up to 30 minutes at any time between the take-off and landing phases of a flight. Special conditions for a 30-minute rating are proposed to address this novel and unusual design feature. The special conditions are discussed below.

Discussion

The Turbomeca model Arriel 2D turboshaft engine is a free turbine turboshaft designed for a normal category, single engine helicopter. The helicopter manufacturer anticipates that for search and rescue, extended hovering maneuvers may require more than maximum continuous power for periods up to 30 minutes. Turbomeca has requested a 30-minute rating, for use up to 30 minutes at any time between the take-off and landing phases of a flight. Turbomeca has indicated that the number of times this rating can be used in one flight is not limited.

Applicability

As discussed above, these special conditions are applicable to the Turbomeca model Arriel 2D turbo shaft engine. If Turbomeca applies later for a change to the type certificate to include another closely related model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, and would be made part of the certification basis for that model.

Conclusion

This action affects only certain novel or unusual design features on one model of engine. 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 engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

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 the Turbomeca model Arriel 2D turbo shaft engine.

1. PART 1 DEFINITION. Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, the following definition applies to this special condition: "Rated 30 Minute Power", means the approved shaft horsepower developed under static conditions at the specified altitude and temperature, and within the operating limitations established under part 33, and limited in use to periods not exceeding 30 minutes each.

2. PART 33 REQUIREMENTS.

(a) Sections 33.1 Applicability and 33.3 General: As applicable, all documentation, testing and analysis required to comply with the part 33 certification basis, must account for the 30 minute rating, limits and usage.

(b) Section 33.4, instructions for continued airworthiness (ICA). In addition to the requirements of 33.4, the ICA must:

(1) Include instructions to ensure that in-service engine deterioration due to rated 30 minute power usage will not be excessive, meaning that all other approved ratings are available within associated limits and assumed usage, for successive flights; and that deterioration will not exceed that assumed for declaring a time between overhaul (TBO) period.

(i) The applicant must validate the adequacy of the maintenance actions required under paragraph (b)(1) above.

(2) Include in the airworthiness limitations section (ALS), any mandatory inspections and serviceability limits related to the use of the 30-minute rating.

(c) Section 33.87, Endurance Test. In addition to the requirements of 33.87(a) and 33.87(b), the overall test run must

include a minimum of 25 hours of operation at 30 minute power and limits, divided into periods of 30 minutes power with alternate periods at maximum continuous power or less.

(1) Modification of the § 33.87 test requirements to include the 25 hours of operation at 30 minute power rating, must be proposed by the Applicant and accepted by the FAA. Note that the test time required for the takeoff rating may not be counted toward the 25 hours of operation required for the 30-minute rating.

Issued in Burlington, Massachusetts, on March 22, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–7598 Filed 3–31–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Department of The Treasury

19 CFR Parts 4 and 24

[Docket No. USCBP–2008–0085]

RIN 1515–AD74

Interest on Untimely Paid Vessel Repair Duties

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend title 19 of the Code of Federal Regulations (19 CFR) to provide that where an owner or master of a vessel documented under the laws of the United States fails to timely pay the duties determined to be due to Customs and Border Protection (CBP) that are associated with the purchase of equipment for, or repair to, the vessel while it is outside the United States, interest will accrue on the amounts owed to CBP and that person will be liable for interest. The purpose of this document is to ensure that title 19 of the CFR reflects that CBP collects interest as part of its inherent revenue collection functions in situations where an owner or master of a vessel fails to pay the vessel repair duties determined to be due within 30 days of CBP issuing the bill.

DATES: Comments must be received on or before May 31, 2011.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP 2008–0085.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the proposed rulemaking process, *see* the "Public Participation" 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.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Carrie Owens, Chief, Entry Process and Duty Refunds, Regulations and Rulings, Office of International Trade, (202) 325–0266.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

Section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466), and Subchapter XVIII, Chapter 98, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), provide, in pertinent part, that equipment purchased for, or repairs made to, an American vessel in a foreign country are subject to entry and the payment of *ad valorem* duty on the first arrival of the affected vessel in any port of the United States.

Section 498 of the Tariff Act of 1930 (19 U.S.C. 1498) provides that the Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of merchandise. Within that statute, paragraph (a)(10) provides, in pertinent part, that the Secretary may prescribe rules and regulations pertaining to the entry of merchandise within the provisions of section 1466 of this title (relating to vessel repairs and equipment purchases).

The Federal Claims Collection Act of 1966, codified at 31 U.S.C. 3701–3720A, as amended, establishes general federal claim and interest collection authority. Section 3717(a) directs the head of an executive, judicial, or legislative agency to charge interest on any outstanding debt to the United States Government. Sections 3737(b) and (d) provide that interest accrues from the date notice is mailed, however no interest will be charged if the amount on the claim is paid within 30 days from the mailing date.

Based on the authority conferred by these statutory provisions, this document proposes to amend title 19 of the Code of Federal Regulations (19 CFR) to provide that where an owner or master of a vessel documented under the laws of the United States fails to timely pay the duties determined to be due to Customs and Border Protection (CBP) that are associated with the purchase of equipment for, or repair to, the vessel while it is outside the United States, interest will accrue on the amounts owed to CBP and that person will be liable for interest. The purpose of this document is to ensure that title 19 of the CFR reflects that CBP collects interest as part of its inherent revenue collection functions in situations where an owner or master of the vessel fails to pay the vessel repair duties determined to be due within 30 days of CBP issuing the bill.

These proposed changes, other than those involving non-substantive editorial changes, are discussed below in more detail.

Explanation of Amendments

Section 4.14

Section 4.14 of title 19 of the Code of Federal Regulations (19 CFR 4.14) sets forth the regulatory provisions applicable to equipment purchases for, and repairs to, American vessels and provides that the costs associated with such expenditures are subject to declaration, entry and payment of *ad valorem* duty.

Section 4.14(i) sets forth the general procedures for seeking relief from the assessment of vessel repair duties and prescribes the manner by which an Application for Relief from such duties must be submitted to CBP. Within § 4.14(i), this document proposes to redesignate existing paragraph (i)(3) as paragraph (i)(4) and to add a new paragraph (i)(3). Newly proposed § 4.14(i)(3), entitled "Application for Relief; failure to file or denial in whole or in part," will provide that if no Application for Relief is filed, or if a timely filed Application for Relief is denied in whole or in part, the VRU (vessel repair unit) will determine the amount of duty due and issue a bill to the party who filed the vessel repair entry. If the bill is not timely paid, interest will accrue as provided in § 24.3a(b)(1) of this chapter.

It is also proposed to amend § 4.14(j)(1), which prescribes the penalties for failure to report, enter, or pay vessel repair duties, to state that the owner or master of the vessel who fails to timely pay the duty determined to be due will be liable for interest as provided in section 24.3a(b)(1) of this chapter.

Section 24.3a

It is proposed to make conforming changes to §§ 24.3a(a) and (b) (19 CFR 24.3a(a) and (b)) which, respectively, prescribe the payment due date for CBP bills and provide for the assessment of interest charges if payment is not received by CBP on or before the late payment date appearing on the bill. The proposed changes to paragraph (a) specifically would include "vessel repair duties" as among the types of bills CBP issues. In paragraph (b), it is proposed to include "vessel repair duties" as among the types of bills for which CBP may assess interest charges from the date the bill is issued.

The Regulatory Flexibility Act and Executive Order 12866

Because these proposed amendments merely reflect the agency's revenue collection functions and rights, and impose no additional regulatory burden on the importing public, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Further, these proposed amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Paperwork Reduction Act

As there are no new collections of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This proposed rulemaking is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Cargo vessels, Customs duties and inspection, Entry, Passenger vessels, Penalties, Repairs, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Exports, Imports, Interest, Reporting and recordkeeping requirements, Taxes, User fees, Wages.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, parts 4 and 24 of title 19 of the CFR (19 CFR Parts 4 and 24) are proposed to be amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADE

1. The general authority citation for part 4 continues, and the specific authority citation for § 4.14 is revised, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.14 also issued under 19 U.S.C. 1466, 1498; 31 U.S.C. 9701.

* * * * *

2. In § 4.14:

a. The heading text is revised;

b. Existing paragraph (i)(3) is redesignated as paragraph (i)(4) and a new paragraph (i)(3) is added; and

c. Paragraph (j)(1) is amended by adding a new third sentence.

The additions to § 4.14 read as follows:

§ 4.14 Equipment purchases for, and repairs to, American vessels.

* * * * *

(i) * * *

(3) *Application for Relief; failure to file or denial in whole or in part.* If no Application for Relief is filed, or if a timely filed Application for Relief is denied in whole or in part, the VRU will determine the amount of duty due and issue a bill to the party who filed the vessel repair entry. If the bill is not timely paid, interest will accrue as provided in § 24.3a(b)(1) of this chapter.

(j) * * *

(1) * * * The owner or master of the vessel who fails to timely pay the duty determined to be due is liable for interest as provided in § 24.3a(b)(1) of this chapter.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

3. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States, 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

4. Section 24.3a is amended:

a. In the heading text, by adding after the word "assessment" the words "on bills";

b. In paragraph (a): by adding after the word "reliquidation)" the language ", or vessel repair duties,"; and by removing the words "shall be" and adding in their place the word "are";

c. In the heading text to paragraph (b)(1), by adding after the word "for" the words "vessel repair duties,";

d. In paragraph (b)(2)(i) introductory text, by removing the word "shall" and adding in its place the word "will";

e. In paragraph (b)(2)(i)(A), by removing the word "shall" and adding in its place the word "will";

f. In paragraph (b)(2)(i)(B) introductory text, by removing the word "shall";

g. In paragraph (b)(2)(i)(B)(*1*), by removing the word "shall" and adding in its place the word "will";

h. In paragraph (b)(2)(i)(B)(*2*), by removing the word "shall" and adding in its place the word "will";

i. In paragraph (b)(2)(i)(B)(*3*), by removing the word "shall" wherever it appears and adding in each place the word "will";

j. In paragraph (b)(2)(i)(B)(*4*), by removing the word "shall" and adding in its place the word "will";

k. In paragraph (b)(2)(i)(C), by removing the word "shall" and adding in its place the word "will";

l. In paragraph (b)(2)(ii), by removing the word "shall" wherever it appears and adding in each place the word "will"; and

m. In paragraph (c)(1), by removing the words "CBP Office of Finance, Indianapolis, Indiana" and adding in their place the language "CBP's Revenue Division, Office of Administration".

Alan Bersin,

Commissioner, U.S. Customs and Border Protection.

Approved: March 29, 2011,

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2011–7815 Filed 3–31–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–131151–10]

RIN 1545–BJ89

Rewards and Awards for Information Relating to Violations of Internal Revenue Laws; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking relating to the payment of rewards under section 7623(a) of the Internal Revenue Code and awards under section 7623(b). The guidance is necessary to clarify the definition of proceeds of amounts collected and collected proceeds under section 7623. This regulation provides needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623.

DATES: The public hearing is being held on Wednesday, May 11, 2011, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Tuesday, April 19, 2011.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG–131151–10), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA: LPD: PR (REG–131151–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kirsten N. Witter at (202) 927–0900; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–131151–10) that was published in the **Federal Register** on Tuesday, January 18, 2011 (76 FR 2852).

Persons, who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, April 19, 2011.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this document.

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–7670 Filed 3–31–11; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Chapter XL

Reducing Regulatory Burden; Review Under E.O. 13563

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Request for comments.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is reviewing its regulations in response to the President's Executive Order 13563 on Improving Regulation and Regulatory Review. The purpose of this review is to make PBGC's regulatory program both more effective and less burdensome. We are starting by identifying regulations for possible modification, streamlining, or repeal, which will be incorporated into a preliminary regulatory review plan. For now, we are asking the public for ideas and information—to suggest candidate regulations for review, alternative approaches, etc.—to help prepare the preliminary plan. There will be additional opportunities for public comment after the preliminary plan is developed and approved.

DATES: PBGC requests that written comments and information on developing the preliminary plan be submitted by April 20, 2011. PBGC will take into consideration comments received after that date to the extent feasible.

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

ADDRESSES: Comments, identified by "Regulatory Review", may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies

of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

SUPPLEMENTARY INFORMATION: PBGC protects the pensions of about 44 million people in about 29,000 private defined benefit plans. PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, PBGC issues regulations interpreting such matters as the termination process for defined benefit plans, establishment of procedures for premium payments, reporting and disclosure, and assessment and collection of employer liability. Regulatory objectives and priorities are developed in the context of PBGC's statutory purposes:

- To encourage voluntary private pension plans;
- To provide for the timely and uninterrupted payment of pension benefits; and
- To keep premiums at the lowest possible levels.

PBGC's intent is to issue regulations that implement the law in ways that do not impede the maintenance of existing defined benefit plans or the establishment of new plans. PBGC attempts to minimize administrative burdens on plans and participants, improve transparency, simplify filing, provide relief for small businesses, and assist plans to comply with applicable requirements. PBGC is committed to issuing simple, understandable, and timely regulations to help affected parties.

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. Among other things, the Executive Order directed agencies to develop and submit a preliminary plan within 120 days that will explain how they will periodically review existing significant regulations to identify any regulations that can be made more effective or less burdensome in achieving regulatory objectives. In the spirit of the Executive Order, PBGC is applying the retrospective review to all of PBGC's existing regulations (not only significant regulations).

PBGC is taking several immediate steps to launch this review of existing regulatory requirements. Consistent with its commitment to public participation, PBGC is soliciting views from the public on how best to conduct its analysis of existing PBGC regulations and how best to identify those regulations that might be modified, streamlined, expanded or repealed. PBGC promulgates regulations in accordance with applicable laws and based on best available information, analyses of different alternatives for agency action, and public participation and input. However, important information as to the consequences of a regulation, including its costs and benefits, comes from practical, real-world experience (both on the part of the public and on the part of the agency) after the regulation has been implemented. Regulated entities and members of the public affected by or interested in PBGC's regulations are likely to have useful information and perspectives on the benefits and burdens of existing regulatory requirements in light of experience since the regulations were issued. Interested parties may also be well-positioned to identify those rules that are most in need of review. PBGC would find such input helpful as it considers how to prioritize and properly tailor its retrospective review process for PBGC's regulations. In short, engaging the public in an open, transparent process is a crucial step in PBGC's review of its existing regulations.

Although PBGC expects to eliminate regulations that are no longer warranted, PBGC will also consider strengthening, complementing, or modernizing regulations where necessary or appropriate—including, as relevant, undertaking new rulemakings. PBGC reminds the public that this review is for existing regulations and not proposed regulations and asks the public not to use this process to submit comments on proposed rules.

PBGC intends for its preliminary plan to include an initial list of candidate regulations for retrospective review.

Questions for the Public

Below is a list of preliminary questions, the answers to which will assist PBGC in its efforts to develop a preliminary plan for the retrospective review of its existing regulations and to identify those regulations that may benefit from a retrospective review. In addressing these questions, commenters should identify, with specificity, the regulation at issue, providing the Code of Federal Regulation (CFR) cite where available. PBGC also requests that commenters provide, in as much detail as possible, an explanation why they believe a regulation should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways PBGC can better achieve its regulatory objectives. Particularly where comments relate to a rule's costs or benefits, comments will be most useful if there are data and experience under the rule available to ascertain the rule's actual impact. Commenters might also address how PBGC can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations and whether there are existing sources of data that PBGC can use to evaluate the effects of its regulations over time.

PBGC encourages the public to emphasize those rules that have been in effect for a sufficient amount of time to warrant a fair evaluation.

In providing comments, please keep these key considerations in mind:

- Retrospective review does not allow PBGC to contravene requirements of its various statutory mandates. In addition, where PBGC's discretion has been limited by law, PBGC's ability to modify, streamline, expand, or repeal regulations is similarly constrained.
- PBGC's plan will be tailored to reflect PBGC's resources, rulemaking history, and the volume of regulations at issue.

These questions are not intended to be exhaustive. Commenters may raise other issues or make suggestions unrelated to these questions that they believe would help PBGC develop better regulations.

(1) How can PBGC identify those rules that can and should be changed, streamlined, consolidated, or removed? What factors should PBGC consider in selecting and prioritizing rules for review? PBGC encourages those submitting comments to include a proposed process under which such a review could be regularly undertaken.

(2) Does PBGC have rules or guidance that are duplicative or that have conflicting requirements with other agencies? Does PBGC currently collect information that it does not need or use effectively to achieve regulatory objectives?

(3) Are there regulations that have become unnecessary and can be withdrawn without impairing PBGC's regulatory programs?

(4) Are there rules that are ineffective and if so, how can they be made effective?

(5) Are there rules that are not tailored to impose the least burden on the public? What are some suggestions that PBGC can use to reduce the burden on such rules as well as suggestions that generally assure that PBGC's regulations promote and achieve its mission in ways that are efficient and less burdensome?

(6) Are there rules that have become outdated and, if so, how can they be modernized to better accomplish their regulatory objectives?

(7) Are there rules that are still necessary, but which have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(8) Are there regulations, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives more efficiently?

(9) Are there any technological developments that can be leveraged to modify, streamline, or repeal any existing regulatory requirements?

(10) How can PBGC best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data PBGC can use to evaluate the effects of regulations over time?

(11) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other PBGC regulatory programs?

PBGC notes that this Request for Comment is issued solely for information and program-planning purposes. The agency will give careful consideration to the responses, and may use them as appropriate during the retrospective review, but does not anticipate providing a response to each comment submitted. However, all submissions will be made publically available on *http://www.regulations.gov.* Responses to this Request for Comment do not bind PBGC to any further actions related to the response.

Issued in Washington, DC, on this 29th day of March 2011.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–7805 Filed 3–31–11; 8:45 am]

BILLING CODE 7709–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9289–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Norwood PCBs Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 is issuing a Notice of Intent to Delete the Norwood PCBs Superfund Site (Site) located in Norwood, Massachusetts, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the Commonwealth of Massachusetts, through the Massachusetts Department of Environmental Protection (MassDEP), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under CERCLA.

DATES: Comments must be received by *May 2, 2011.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: Keefe.daniel@epa.gov*
- *Fax:* 1–617–918–0327
- *Mail:* Daniel Keefe, U.S. EPA Remedial Project Manager, 5 Post Office Square (OSRR07–1), Boston, MA 02109–3912
- *Hand delivery:* to the following address: Daniel Keefe, 5 Post Office Square (OSRR07–1), Boston, MA 02109. Such deliveries are only accepted during the EPA's normal hours of operation (9 a.m. to 5 p.m.), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket

All documents in the 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 statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

EPA Region 1 Record Center, 5 Post Office Square, Boston, MA 02109, Phone: 1–617–918–1440, Hours: Mon–Fri 8 a.m. to 5 p.m.

Norwood Morrill Memorial Library, 33 Walpole Street, Norwood, MA, Phone: 781–769–0200, Hours: Mon–Thurs 9 a.m. to 9 p.m.; Friday 10 a.m. to 5 p.m.; Saturday 9 a.m. to 5 p.m.; Sunday 2 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Daniel Keefe, Remedial Project Manager, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square (OSRR07–1), Boston, MA 02109–3912, (617) 918–1327, or at *keefe.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of

today's **Federal Register**, we are publishing a direct final Notice of Deletion of Norwood PCBs Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: March 17, 2011.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2011–7776 Filed 3–31–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GEN Docket No. 86–285; FCC 11–27]

Amendment of the Schedule of Application Fees

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comments to clarify the rules on the payment of filing fees by winning bidders in auctions of construction permits in the broadcast services in conjunction with their long-form applications.

DATES: Comments are due April 18, 2011, and reply comments are due May 2, 2011.

ADDRESSES: You may submit comments, identified by GEN Docket No. 86–285, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov.* Include GEN Docket No. 86–285 in the subject line of the message.
- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

1. By this Notice of Proposed Rulemaking, adopted on February 28, 2011 and released on March 3, 2011, we seek to clarify the rules on the payment of filing fees by winning bidders in auctions of construction permits in the broadcast services in conjunction with their long-form applications. In the *Broadcast Competitive Bidding First Report and Order,* the Commission required the filing of application fees in such cases, and section 1.1104, the Schedule of Charges for Media Bureau Service filings, requires the payment of a fee when the long-form application is filed.[1] However, section 1.2107(c) of the rules provides with regard to the filing of long-form applications by winning bidders in auctions that, "Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications."[2] To resolve any inconsistency and to conform Section 1.2107(c) to the Commission's determination in the *Broadcast Competitive Bidding First Report and Order* as reflected in section 1.1104, we propose to amend section 1.2107(c) by revising the cited sentence to read as follows: "Except as otherwise provided in section 1.1104 of the rules, high bidders need not submit an additional application fee with their long-form applications." We seek comment on this proposal.

Procedural Matters

2. *Regulatory Flexibility Act.* The rule change proposed in the *Notice of Proposed Rulemaking* will not have a significant economic impact on a substantial number of small entities or impose significant costs on parties to Commission proceedings.

3. *Comment Filing Procedures.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments in the *Notice of Proposed Rulemaking* 15 days after publication in the **Federal Register,** and reply comments 15 days after the comment deadline. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers.* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/.* Filers should follow the instructions provided on the Web site for submitting comments.
- ECFS filers must transmit one electronic copy of the comments for Gen. Docket No. 86–285. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail due to security measures). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

[1] Implementation of Section 309(j) of the Communications Act—Competitive Bidding Procedures for Commercial Broadcast and Instructional Television Fixed Television Service Licenses, MM Docket No. 97–234, *First Report and Order,* 13 FCC Rcd 15920, 15984–85 para. 164 (1998) (*Broadcast Competitive Bidding First Report and Order*).

[2] 47 CFR 1.2107(c). The Commission adopted section 1.2107(c) before the Balanced Budget Act of 1997 extended the Commission's competitive bidding authority under Section 309(j) of the Communications Act of 1934 to mutually exclusive applications for construction permits or licenses in broadcast services. *See* Balanced Budget Act of 1997, Public Law 105–33, Title III, 111 Stat. 251 (1997).

• All hand-delivered and/or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 Twelfth St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 Twelfth Street, SW., Washington, DC 20554.

4. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BPCI), Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.* Documents in GEN Docket No. 86–285 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

5. Ex Parte *Presentations.* The *Notice of Proposed Rulemaking* shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* Requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

6. *Accessible Formats.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0432 (tty).

Ordering Clauses

7. Accordingly, *it is ordered,* that, pursuant to sections 1, 4(i), 4(j), and 8 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), and 158, this Notice of Proposed Rulemaking is *hereby adopted.*

8. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309, unless otherwise noted.

2. Amend § 1.2107 by revising paragraph (c) to read as follows:

§ 1.2107. Submission of down payment and filing of long-form applications.

* * * * *

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder. Except as otherwise provided in § 1.1104, high bidders need not submit an additional application filing fee with their long-form applications.

* * * * *

[FR Doc. 2011–7475 Filed 3–31–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0084; [MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Spring Pygmy Sunfish as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the spring pygmy sunfish (*Elassoma alabamae*) as endangered under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition and information currently available in our files presents substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if the petitioned action is warranted. To ensure this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before May 31, 2011. Please note that if you are using 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. After May 31, 2011, you must submit information directly to the Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS–R4–ES–2010–0084. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct document before submitting your comment.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R4–ES–2010–0084; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information we receive on the Internet at *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601–321–1122); or by facsimile (601–965–4340). If you use a telecommunications

device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the spring pygmy sunfish from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

If, after the status review, we determine that listing the spring pygmy sunfish is warranted, we will propose critical habitat (*see* definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the spring pygmy sunfish, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species";

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential to the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

Previous Federal Actions

On November 29, 1977, we proposed to list the spring pygmy sunfish as endangered and to designate critical habitat (42 FR 60765). We withdrew the critical habitat portion of the proposal on March 6, 1979 (44 FR 12382). We then proposed critical habitat again for the species on July 27, 1979 (44 FR 44418). On January 24, 1980, we withdrew the pending proposal to list the spring pygmy sunfish, along with the proposed critical habitat designation (effective November 29, 1979) (45 FR 5782).

The spring pygmy sunfish has been included in the following notices as a candidate species for listing: December 30, 1982 (47 FR 58454); September 18, 1985 (50 FR 37958); January 6, 1989 (54 FR 554); and November 15, 1994 (59 FR 58982).

On February 28, 1996 (61 FR 7457), the Service published a notice of review in the **Federal Register** that removed the spring pygmy sunfish from the proposed candidate list because of recent discoveries (particularly of the Pryor Springs population).

Petition History

On November 24, 2009, we received a petition dated November 24, 2009, from the Center for Biological Diversity (CBD) and Michael Sandel of the University of Alabama, requesting that we list the spring pygmy sunfish (*Elassoma alabamae*) as endangered under the Act. The petition clearly identified itself as such and included the requested identification information for the petitioners as required by 50 CFR 424.14(a). In a December 17, 2009, letter, we informed the petitioners that we had reviewed the information presented in the petition, and outlined the petition process and timelines. In July 2010, we received letters from the North American Native Fishes Association (NANFA) and Dr. Stallsmith (University of Alabama at Huntsville) requesting that we emergency list the species under section 4(b)(7) of the Act. Following review of the petition, the letters, and information in our files, we also determined that issuing an emergency regulation temporarily listing the species was not warranted. We notified NANFA and Dr. Stallsmith of our determination on July 21, 2010.

Species Information

The spring pygmy sunfish (*Elassoma alabamae*) was discovered in 1938 but was not described until 1993 (Mayden 1993, pp. 1–14). This species is the smallest member of the genus *Elassoma.* Males are normally smaller than females, and both sexes have 5 to 8 broad, dark vertical bars separated by light-colored, narrow bars. Males are very dark to black with iridescent blue green color on their sides, cheeks, and gill covers (Boschung and Mayden 2004, pp. 614–615).

The spring pygmy sunfish is a spring-associated fish, endemic to the Tennessee River drainage in the Eastern Highland Rim physiographic province and Dissected Tablelands (Curtis *et al.* 1913, p. 53) of Lauderdale and Limestone Counties in northern Alabama. The single remaining population of the spring pygmy sunfish currently occupies about 5 river miles (mi) (8.05 river kilometers (km)) of shallow, vegetated areas within four spring pools confluent with the upper Beaver Dam Spring Complex. These spring pools include Moss, Beaverdam, Thorsen, and Horton Springs, all in Limestone County, Alabama. The species is thought to be extirpated in Pryor Springs (also in Limestone County).

The spring pygmy sunfish was initially discovered in Cave Springs (Lauderdale County) in 1938, and extirpated about a year later due to inundation from the formation of Pickwick Reservoir. In 1941, the species was discovered in Pryor Springs (Limestone County). A series of geomorphic and contamination events over 30 years is believed to have attributed to the demise of the species in Pryor Springs and throughout the species' range—(Boschung and Mayden 2004, pp. 614–615). There are few documented sampling efforts in Pryor Springs between 1966 and 1979. However, collection information from this time period indicates a declining and almost extinct population, nearing extirpation. By 1984, an effort to re-establish the population of spring pygmy sunfish included transplanting the species from Moss Spring into Pryor Springs (Mettee *et al.* 1986, pp. 14–15). Reintroduction efforts continued in 1985 and 1987 (Mettee *et al.* 1986, pp. 6–7); however, by 2007, the species was believed extirpated from Pryor Springs due to impaired water quality and quantity problems, most likely attributable to agriculture (Sandel 2008, p. 2).

The preferred habitat for the spring pygmy sunfish is clear and colorless to slightly stained spring water, spring runs, and associated spring-fed wetlands (Warren 2004, pp. 184–185). Spring pool habitats are typically static, persisting without disturbance for long periods. The spring pygmy sunfish is highly localized within these spring pools, being found in the water column associated with patches of specific submergent vegetation. Spring pygmy sunfishes are generally found at water depths from 5 to 40 inches (in) (12.7 cm to 101.6 centimeters (cm)) and rarely in the upper 5 in (12.7 cm) of the water column. Spring pygmy sunfish abundance is correlated with specific water quantity and quality parameters (i.e., water flow velocity, turbidity, anoxic (lack of oxygen) substratum, and water temperatures) and certain associated species such as amphipods, isopods, spring salamanders, crayfish, and snails (Sandel, pers. comm., 2007). The spring pygmy sunfish has high fecundity and quickly populates areas of available habitat (Sandel, pers. obs., 2004 through 2009). Reproductively active adults occur from January to October. Spawning occurs in March and April, when water quality parameters are within a suitable range, such as a pH of 6.0 to 7.7 and water temperatures of 57.2 to 68 degrees Fahrenheit (°F) (14 to 20 degrees Celsius (°C)). Spring pygmy sunfish produce about 65 eggs, and hatching occurs from April to September (Sandel, pers. obs., 2004 through 2009).

The species is most abundant at the spring emergence, and exhibits metapopulation (a group of spatially separated populations of the same species that have some interaction) structure by occupying all suitable spring habitats where there is flowing spring water. This suggests that the population in the Beaverdam Creek system is a single, structured, continuous group of breeding individuals, genetically identifiable with limited gene flow from each springhead subpopulation (Sandel 2008, pp. 15–16).

It is believed that migration between springheads is very important in maintaining genetic diversity of species within these small areas, although gene flow is limited. Even though individual subpopulations may be extirpated at times, due to drought or other ecological issues, the simultaneous loss of many subpopulations may cause extinction of the metapopulation.

We accept the characterization of the spring pygmy sunfish as a valid species based on the taxonomic characters distinguishing the species from other members of the *Elassoma* genus (Mayden 1993, p. 4).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding threats to the spring pygmy sunfish, presented in the petition and available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petition states that decreased water quantity has degraded the spring pygmy sunfish's habitat (Warren *et al.* 2000; Warren 2004; Boschung and Mayden 2004) (cited in petition). Specifically, water from the aquifer of the Eastern Highland Rim located within the Tennessee River Catchment containing the entire Beaverdam Creek watershed is being withdrawn daily by the city of Huntsville and adjacent rural residents at a volume of 40 million gallons per day (MGD) (Compiled from NAWQA 2001, 2009; Sandel, pers. com, 2007).

The petition states that this water withdrawal quantity is at least three times greater than the withdrawal volumes from the eight surrounding watersheds that remove at least 12 MGD. Groundwater extraction by agriculture from the springs (Thorsen Spring, Horton Spring, and Pryor Branch/Spring systems), with five diesel irrigation pumps operating simultaneously, withdraws 8,000 to 16,000 gallons per minute during drought conditions. In 2007, water from Thorsen Spring was extracted to a level that destroyed existing vegetation and decreased the abundance of the spring pygmy sunfish abundance by 99 percent (Sandel, pers. obs., 2004 through 2007). Chronic regional drought between 2000 and 2005 reduced rates of surface water flow and aquifer recharge. Desiccation of aquatic vegetation by water removal (pumping) within Thorsen, Horton, and Pryor Springs negatively impacted the vegetation of the spring pygmy sunfish's habitat (Jandebeur 1979; Mayden 1993; as cited in the petition).

The petition states that declining water quality is a major threat to the spring pygmy sunfish due to the use of fertilizers and other agricultural chemicals within the Beaverdam Creek watershed. According to the petition, the watershed contains about 14,016 acres (5672.28 ha) of row cropland that uses fertilizers and other chemicals, which is eventually transported at a runoff rate exceeding 25 MGD throughout the tributaries of the watershed.

The petition states that removal of aquatic and riparian vegetation due to herbicide application is a major threat to the spring pygmy sunfish. Herbicide application and other methods of aquatic vegetation removal within Thorsen Spring, Horton Spring, and Pryor Branch/Spring systems have impacted the species' habitat (Jandebeur 1979; Mayden 1993) (cited in petition).

Evaluation of Information Provided in the Petition and Available in Service Files

Data from our files support the petition's assertion that diminishing water quantity has the potential to be a significant threat to the spring pygmy sunfish. Increased urbanization within the entire Eastern Highland Rim topographic area (Woodside *et al.* 2001, p. 6) has increased water quantity usage throughout the Tennessee Valley Basin. Demand for water is correlated to projected population levels in Limestone and Lauderdale Counties. By 2015, the population in these counties is projected to increase dramatically (Roop 2010). Growing populations correspondingly increase demand for surface and ground water extraction within the Eastern Highland Rim. Currently about 40 percent of the public water supply for the City of Huntsville is withdrawn from the Tennessee River and 40 percent from groundwater (Hoos *et al.* 2001, p. 1; Kingsbury 2003, p. 2).

The information in our files regarding groundwater extraction for Lauderdale and Limestone Counties is limited to general watershed and county-level data (USGS 2009a; USGS 2009b; Hutson *et al.* 2005, pp. 1–2). The petition only estimates the potential of eight pumps operating simultaneously within the spring pygmy sunfish's sites. Information in our files, along with field observations (Drennen, pers. obs., 2007 through 2009), supports the petition's claim that water is being withdrawn from spring pygmy sunfish habitat for irrigation. However, the specific water quantity removed from these sites and the impact that this removal has on the spring pygmy sunfish is not substantiated, and we do not have supporting information within our files.

Declining water quality information presented in the petition for the Eastern Highland Rim, in general, is supported by information found in our files. Specific site threats to the spring pygmy sunfish mentioned in the petition, such as excessive sediment, decreasing water clarity, decreasing spawning and feeding sites, reduction of light, and the use of fertilizers and pesticides, were identified by the petition as impacting the broad topographic region that includes the limited sites occupied by the spring pygmy sunfish. However, the significance of this general threat to the spring pygmy sunfish is unknown. Information in our files supports the petition's assertion that decreased water quality may be a threat to the spring pygmy sunfish.

Information in the petition and in our files indicates that, since 1945, various techniques for removing or limiting aquatic vegetation, such as herbicides, cattle grazing, and irrigation, have occurred within the spring systems and waterways throughout the habitat of the spring pygmy sunfish (Jandebeur 1979, pp. 4–8). The information in our files also supports the statement in the petition that manipulation and control of aquatic vegetation in the spring systems may be a threat to the spring pygmy sunfish.

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range, specifically because of declining water quantity and quality and loss of aquatic vegetation.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Information Provided in the Petition

The petition states that overutilization has not been implicated in the decline of this species because monthly surveys over the last 5 years for scientific evaluation were nonlethal. Previous lethal sampling of the spring pygmy sunfish within the various sites across the species' range for genetic work never constituted more than 10 percent of the total individuals collected per sampling event. The petition states that there is no evidence to suggest over-exploitation as a cause for the decline of the spring pygmy sunfish.

Evaluation of Information Provided in the Petition and Available in Service Files

There is no evidence provided by the petition, or within our files, to support threats under this factor. Therefore, we find that the information provided in the petition, as well as other information in our files, does not indicate or document that overutilization for commercial, recreational, scientific or educational purposes poses a threat to the species. However, we will evaluate all factors, including overutilization for commercial, recreational, scientific, or educational purposes, when we conduct the status review.

C. Disease or Predation

Information Provided in the Petition

The petition states that there is no evidence to suggest that disease is a

cause for the decline of the spring pygmy sunfish. However, the petition does state that chain pickerel (*Esox nigra*) prey on the spring pygmy sunfish (Jandebeur 1997, cited in petition), and that other types of pygmy sunfish species in different localities have been found in the gut contents of piscivorous (fish-eating) fishes (Walsh and Burr 1984, cited in petition). The petition states that invasive species, such as predators like pirate perch (*Aphredoderus sayanus*) and grass pickerel (*Esox americanus*), and potential competitors such as the flier (*Centrarchus macropterus*) and bantam sunfish (*Lepomis symmetricus*), threaten the spring pygmy sunfish.

Evaluation of Information Provided in the Petition and Available in Service Files

The information in our files supports the assertion in the petition that disease is not a threat to the spring pygmy sunfish. Predation does pose a potential threat to the spring pygmy sunfish.

In summary, we find that neither the information in the petition, nor other information in our files, indicates that disease is a threat to the spring pygmy sunfish. However, we find that the information provided in the petition, as well as other information in our files, suggests that predation by natural or invasive species may pose a threat to the spring pygmy sunfish. We will evaluate all factors, including disease and predation, when we conduct the status review.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition states that the spring pygmy sunfish is not formally recognized or protected at any government level. Current State and Federal laws and regulations involving alteration of wetlands; channelization; water withdrawal; pesticide use and other agriculture best management practices; and buffer zones to protect water quality and quantity within spring systems are available, but these do not prohibit destroying the spring pygmy sunfish or its habitat.

Evaluation of Information Provided in the Petition and Available in Service Files

The spring pygmy sunfish and its habitat are afforded some protection from water quality and habitat degradation under the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*) and the Alabama Water Pollution Control Law (Code of Alabama, sections 22–22–1 *et seq.,* and regulations promulgated thereunder by the Alabama Department of Environmental Management) (Maynard and Gale. 1995, pp. 20–28). While these laws have resulted in some improvement in water quality and stream habitat for aquatic life, including the spring pygmy sunfish, such as requiring landowners engaged in agricultural practices to have an erosion prevention component within their farm plan, they alone have not been fully adequate to protect this species due to inconsistent implementation, monitoring, and enforcement. Furthermore, habitat degradation is ongoing despite the protection afforded by these laws.

The State of Alabama maintains water-use classifications through issuance of National Pollutant Discharge Elimination System (NPDES) permits to industries, municipalities, and others that set maximum limits on certain pollutants or pollutant parameters. For water bodies on the Clean Water Act's Section 303(d) List of Impaired Water Bodies, States are required under the Clean Water Act to establish a Total Maximum Daily Load (TMDL) for the pollutants of concern that will bring water quality into the applicable standard. Many of the water bodies that do not meet Clean Water Act standards are within the occupied range of the spring pygmy sunfish (Alabama 2008 Section 303(d) List of Impaired Water Bodies).

The State of Alabama's water quality standards, adopted from the national standards set by the U.S. Environmental Protection Agency (USEPA), appear to be protective of the spring pygmy sunfish as long as discharges are within permitted limits and are enforced according to the provisions of the Clean Water Act. These water quality requirements were established with the intent to protect all aquatic resources within the State of Alabama and are presumed to be protective of the spring pygmy sunfish. The Service is currently in consultation with the USEPA to evaluate the efficacy of criteria approved in USEPA's water quality standards for endangered and threatened species and their critical habitats as described in the Memorandum of Agreement our agencies signed in 2001 (66 FR 11201; February 22, 2001). Because the spring pygmy sunfish is not currently a federally listed species, it is not specifically considered in the ongoing consultation with USEPA.

Water extraction has also been identified as a potential threat to the species (see Factor A above). There are few, if any, State and Federal regulations pertaining to ground water extraction and protection of aquifer recharge areas.

In summary, the petition's claim that there are no existing regulatory mechanisms that protect the spring pygmy sunfish or its habitat from destruction is not supported by the information in our files. However, the information in our files indicates that degradation of habitat for this species is ongoing despite the protections afforded by these existing laws. Therefore, the information in the petition and in our files presents substantial information indicating that the petitioned action may be warranted due to the inadequacy of existing regulatory mechanisms, particularly those affording protection from habitat destruction or degradation.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petition states that the Beaverdam Creek metapopulation is considered a single, semi-continuous group of subpopulations (Sandel, pers. comm., 2007; Sandel 2008, pp. 13–14), and that impediments to migration and gene flow between springheads are detrimental to maintaining genetic diversity in the species. Individuals from each site are genetically identifiable in a structured population, with limited, but regular, gene flow. The genetic viability of subpopulations is interdependent. Subpopulations may be naturally extirpated at times, and the simultaneous loss of many subpopulations may cause the metapopulation to become extinct. The petition states that inbreeding is a potential factor in the decline of the spring pygmy sunfish in Pryor Springs due to the reintroduction of too few individuals (Mettee *et al.* 1986; Sandel 2008) (as cited in petition).

The petition states that if Asian silver and bighead carps (*Hypopthalmichthys* spp.) are introduced or expand their range from their present locality in the lower Tennessee River and Wheeler Reservoir systems, they may disturb the Beaverdam Creek plankton ecosystem by consuming significant proportions of plankton. The petition also states that invasive plant species, such as floating Amazonian parrot feather (*Myriophyllum aquaticum*) and water hyacinth (*Eichhornia* sp.), and the submerged aquatic vegetation *Myriophyllum verticillatum* and *Ceratophyllum echinatum,* threaten the Beaverdam Creek ecosystem by competitively excluding native vegetation and storing important nutrients within their aerial stems and

leaves, resulting in little nutrition or cover for the food base of the species (no reference cited in the petition).

Evaluation of Information Provided in the Petition and Available in Service Files

Data from our files support the petition's assertion that impediments to migration and gene flow between springheads are detrimental to maintaining genetic diversity in the species, and therefore may be a significant threat to the spring pygmy sunfish.

Mechanical fragmentation of the species' habitat into smaller, isolated subpopulations has transpired due to localized environmental degradation from agriculture, increased urbanization, and other anthropogenic disturbances of the spring systems throughout the watersheds of the Eastern Highland Rim (Sandel 2008, pp. 2–4, 13). This fragmentation of the spring pygmy sunfish's habitat has the potential to impose negative selective pressures on the species' populations, including genetic isolation; reduction of space for rearing, recruitment, and reproduction; reduction of adaptive capabilities and increased likelihood of local extinctions (Burkhead *et al.* 1997, pp. 397–399). Connectivity of these fragmented habitats as a whole allows improvement in water quality by flushing and diluting possible pollutants and in water quantity by linking the water bodies together. Connectivity also maintains flow between the existing occupied habitat and unoccupied habitat, which, in turn, allows for the potential of colonization of these unoccupied habitat areas when conditions become favorable for the species. In addition, the connectivity also maintains heterozygosity (genetic diversity), or gene flow between the populations of the species, and reduces inbreeding, thereby maintaining the integrity of the population (Hallerman 2003, pp. 363–364).

However, we find that the information provided in the petition and in our files does not support the claim that Asian silver and bighead carps, or invasive plant species, pose a threat to the spring pygmy sunfish at this time.

In summary, we find the information provided in the petition, as well as other information in our files, concerning habitat fragmentation and its resulting effects on gene flow and potential demographic impacts within the population is substantial, indicating that the petitioned action may be warranted due to other natural or manmade factors affecting the spring pygmy sunfish's continued existence.

Finding

On the basis of our review under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the spring pygmy sunfish throughout its entire range may be warranted. This finding is based on information provided under Factors A, C, D and E. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information should contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Because we have found that the petition presents substantial information indicating that listing may be warranted, we are initiating a status review to determine whether listing the spring pygmy sunfish under the Act is warranted.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213.

Authors

The primary author of this notice is Daniel J. Drennen of the Mississippi Ecological Services Field Office, Jackson, MS (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 16, 2011.

Rowan W. Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–7691 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 76, No. 63

Friday, April 1, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committees on Administration & Management, Collaborative Governance, and Judicial Review

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of public meetings of three committees of the Assembly of the Administrative Conference of the United States (ACUS). Each committee will meet to discuss recommendations for consideration by the full Conference. Complete details regarding each committee's meeting, related research reports, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to the committee can be found in the "Research" section of the ACUS Web site, at *http://www.acus.gov.*

Comments may be submitted by e-mail to *Comments@acus.gov,* with the name of the relevant committee in the subject line, or by postal mail to "[Name of Committee] Comments" at the address given below.

ADDRESSES: The meetings will be held at 1120 20th Street, NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer for the individual committee, ACUS, 1120 20th Street, NW., Suite 706 South, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION:

Committee on Administration & Management

The Committee on Administration & Management will meet to discuss a draft recommendation concerning ethics standards for government contractor employees.

Date: Monday, April 18, 2011, from 2 p.m. to 5 p.m.

Designated Federal Officer: Scott Rafferty.

Committee on Collaborative Governance

The Committee on Collaborative Governance will meet to discuss a draft recommendation and a related report on "best practices" under and potential improvements to the Federal Advisory Committee Act, with particular focus on technological and social developments since the Act's passage.

Date: Thursday, April 21, 2011, from 1 p.m. to 3:30 p.m.

Designated Federal Officer: David M. Pritzker.

Committee on Judicial Review

The Committee on Judicial Review will meet to discuss a draft recommendation on potential solutions to the procedural trap posed by 28 U.S.C. 1500, a statute that regulates the Court of Federal Claims' jurisdiction over claims pending in other courts.

Date: Friday, April 29, 2011, from 1 p.m. to 4 p.m.

Designated Federal Officer: Reeve T. Bull.

Dated: March 29, 2011.

Jonathan R. Siegel,

Director of Research & Policy.

[FR Doc. 2011–7750 Filed 3–31–11; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 28, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Nectarines and Peaches Grown in California.

OMB Control Number: 0581–NEW.

Summary of Collection: Federal marketing orders and agreements are authorized by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674; Act). Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Regulations may determine the products' grade, size and quality; inspection requirements; set container and pack requirements; pooling and volume; and authorize research and market development projects. The Federal programs for nectarines and peaches are administered through a partnership between USDA and the California Tree Fruit Agreement (CTFA). The Nectarine Commodity Committee and the Peach Commodity Committee make up the CTFA.

Need and Use of the Information: The Agricultural Marketing Service will use five new forms "Daily Pack-out Report," "Grower Report," "Peach Shipment Report," "Nectarine Shipment Report," and "Export Peach Destination Report," to facilitate the collection of industry information for the committees. The

information collection requirements are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing order programs.

Description of Respondents: Business for profit; farms.

Number of Respondents: 97.

Frequency of Responses: Reporting: On occasion; weekly; quarterly; recordkeeping.

Total Burden Hours: 5,498.

Agricultural Marketing Service

Title: Livestock & Meat Market News.

OMB Control Number: 0581–0154.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), Section 203(q), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock and Meat Market News provides a timely exchange of accurate and unbiased information on current marketing conditions affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS), this nationwide market news program is conducted in cooperation with approximately 27 States departments of agriculture. AMS will collect information using market reports.

Need and Use of the Information: The information provided by respondents initiates market news reporting, which must be timely accurate, unbiased, and continuous if it is to be meaningful to the industry. AMS will collect information on price, supply, demand, trends, movement, and other information of livestock, meat carcasses, meat and pork cuts, and meat byproducts. Several agencies, agricultural universities and college use the information collected to keep appraised of the current market conditions, movement of livestock and meat in the United States and to determine available supplies and current pricing.

Description of Respondents: Business or other for-profit; individuals or households.

Number of Respondents: 990.

Frequency of Responses: Reporting: Weekly; other (daily).

Total Burden Hours: 10,391.

Agricultural Marketing Service

Title: Pistachios Grown in California, Arizona and New Mexico.

OMB Control Number: 0581–0215.

Summary of Collection: The Pistachio Marketing Order, (7 CFR part 983), covering pistachios grown in California, Arizona and New Mexico is established and regulated under the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended, (7 U.S.C. 601–674), herein referred to as the Act. The order regulates the handling of pistachios, authorizes grade and size requirements, as well as a requirement for aflatoxin testing on domestic shipments only. The Secretary is authorized to oversee the order operations and issue regulations recommended by representatives from the Pistachio Committee.

Need and Use of the Information: The Agricultural Marketing Service has developed forms as a convenience for handlers and producers who are required to file certain information with the Committee relating to pistachio supplies, shipments, dispositions, and other information needed to effectively implement the requirements of the order and carry out the purposes of the Act. Collecting data less frequently would eliminate the Secretary's ability to administer the order.

Description of Respondents: Business or other for profit; farms.

Number of Respondents: 920.

Frequency of Responses: Reporting: On occasion; weekly; monthly; quarterly; annually.

Total Burden Hours: 432.

Agricultural Marketing Service

Title: USDA Farmers Market Application.

OMB Control Number: 0581–0229.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels. The Agricultural Marketing Service (AMS) is authorized to implement established regulations and procedures under 7 CFR part 170 for AMS to operate the U.S. Department of Agriculture (USDA) Farmers Market, specify vendor criteria and selection procedures, and define guidelines to be used for governing the USDA Farmers Market annually. Information will be collected on form TM–28, "USDA Farmers Market Application."

Need and Use of the Information: The application was developed to ensure a uniform and fair process for deciding which farm operations are allowed to participate in the market, as well as ensure diversity of product for consumers. AMS will collect information to review the type of products available for sale and selecting participants for the annual market season. The information collected consists of (1) Certification that the applicant is the owner or a representative of the farm or business; (2) name(s), address, telephone number and email address; (3) farm or business location; (4) types of products grown; (5) business practices; and (6) insurance coverage.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 30.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 4.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–7647 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Agriculture (USDA) is proposing to add a new Forest Service system to its inventory of records systems. USDA invites public comment on this new records system.

DATES: Comments must be received in writing, on or before May 2, 2011. This system will be adopted without further notice, on May 31, 2011, unless modified to respond to comments received from the public and published in a subsequent notice.

ADDRESSES: Send written comments to the Forest Service Freedom of Information Act and Privacy Act Officer, USDA Forest Service, 1400 Independence Avenue, SW., Mail Stop 1143, Washington, DC 20250–1143. Comments may also be sent via e-mail to *wo_foia@fs.fed.us,* or via facsimile to (202) 260–3245.

FOR FURTHER INFORMATION CONTACT: Sherry L. Turner, Freedom of Information Act and Privacy Act Officer, USDA Forest Service, 1400 Independence Avenue, SW., Mailstop 1143, Washington, DC 20250–1143, *wo_foia@fs.fed.us,* (202) 205–1542. Individuals who use telecommunication devices for the deaf (TDD) may call the

Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Established in 1905, the Forest Service is an agency of the U.S. Department of Agriculture. The mission of USDA's Forest Service is to sustain the health, diversity, and productivity of the Nation's forests and grasslands that encompass 193 million acres of land, to meet the needs of present and future generations.

The purpose of this system is to allow USDA's Forest Service to maintain records for agency compliance and administration of the FOIA and PA laws. This system contains information on individuals who request copies of Forest Service records, file administrative appeals, request corrections or amendments, or file subsequent lawsuits under the provisions of the FOIA and PA.

A report of the new system of records, required by 5 U.S.C. 552a(r) as implemented by Office of Management and Budget (OMB) Circular A–130, was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, OMB.

Dated: March 18, 2011.

Thomas J. Vilsack,

Secretary.

SYSTEM NAME:

Freedom of Information Act and Privacy Act Files, USDA/FS–61.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The records in this system are collected in a Web-based system located on servers in Kansas City, Kansas. Paper records are located at the Forest Service Freedom of Information Act (FOIA) and the Privacy Act (PA) Offices located in Washington, DC, as well as the FOIA and PA Coordination offices nationwide. The addresses for the Regions, Stations, International Institute for Tropical Forestry, and Forests are listed in 36 CFR part 200, subpart A; and the addresses for Districts are in the telephone directory of the applicable locality under the heading, United States Government, Department of Agriculture, Forest Service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request copies of Forest Service records, file administrative appeals, request correction or amendment, and file subsequent lawsuits under the provisions of the FOIA or PA.

CATEGORIES OF RECORDS IN THE SYSTEM:

A copy of the request, appeal, request for correction/amendment, or subsequent lawsuit received including name, affiliation, address, telephone number, e-mail address; description of records requested, appealed, or litigated; copy of records that were provided or denied; copy of all correspondence related to the request to include final determinations; billing information to include payment delinquencies; case notes; and litigation records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act 5 U.S.C. 552, Privacy Act of 1974, 5 U.S.C. 552a, as amended.

PURPOSE(S):

The FOIA records are used and maintained by the Forest Service to record, control, and determine status of FOIA cases; and to prepare a mandatory annual FOIA report to the U.S. Department of Justice. The PA records are used and maintained by the Forest Service to record, control, and determine the status of requests to correct or amend appeals and litigation. Both the FOIA and PA records are used to produce status reports for Forest Service management and to serve as a point of reference for all events and documents pertinent to each case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclose to another Federal agency in connection with a referral or consultation to that agency for its views or decision on disclosure; or in order to obtain advice and recommendations that may be useful to the Forest Service in making the required determination under the FOIA and PA.

2. Disclose to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. Disclose to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to the litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. Disclose when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

5. Disclose to a Member of Congress or a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

6. Disclose to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

7. Disclose to agency contractors, grantees, experts, consultants, or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

8. Disclose to appropriate agencies, entities, and persons when: (1) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department

has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by 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:

All electronic information is maintained in a web-based database and stored on secured servers in Kansas City, Kansas. Hard copy records are retrieved by name and unique request identification number in locked file cabinets in secured office buildings.

RETRIEVABILITY:

Electronic records are indexed and retrieved electronically using multiple queries including name and unique request identification number, or other criteria. Hard copy records are retrieved by name of the requester and unique request identification number.

SAFEGUARDS:

All electronic information is maintained in a secure, password-protected, web-based database and stored on secured servers in Kansas City, Kansas. Hard copy records are maintained in locked file cabinets in secured office buildings. Only specifically authorized individuals can access the information.

RETENTION AND DISPOSAL:

All electronic and hard copy records are maintained under file code 6270 and retained and disposed of in accordance with the appropriate General Records Schedules of the National Archives and Records Administration. Electronic records are deleted, and paper records are shredded and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Act and Privacy Act Officer, USDA Forest Service, 1400 Independence Avenue, SW., Mailstop 1143, Washington, DC, 20250–1143, *wo_foia@fs.fed.us,* (202) 205–1542.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him or her from the system manager listed above. The request should be in writing and should contain the name and address of the requester.

RECORD ACCESS PROCEDURES:

Use the same procedures as those prescribed in Notification procedures.

CONTESTING RECORD PROCEDURES:

Use the same procedures as those described in Notification procedures.

RECORD SOURCE CATEGORIES:

Individuals who submit requests for information pursuant to the FOIA and PA, the agency records obtained in the process of responding to such requests and appeals, and Forest Service personnel who handle such requests and appeals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

U.S. Department of Agriculture; Privacy Act System of Records; Freedom of Information Act and Privacy Act Case Files USDA/FS–61; Narrative Statement

The purpose of the proposed system is to provide the United States Department of Agriculture's (USDA) Forest Service (FS) the capability to record, control, and determine the status of Freedom of Information Act (FOIA) and Privacy Act (PA) cases, and to prepare a mandatory annual FOIA report to the U.S. Department of Justice. The FOIA and PA Case files are managed by the Office of Regulatory and Management Services Freedom of Information Act/Privacy Act staff. The Forest Service is the administrative agency for this system.

The authority for maintaining this system of records is the Freedom of Information Act, 5 U.S.C. 552; and the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

The information gathered is voluntarily submitted by individuals who request agency records pursuant to the FOIA and PA. The system of records consists of a copy of the request, appeal, request for correction/amendment, or subsequent lawsuit received; a description of the records requested, appealed, or litigated; a copy of records that were provided or denied; a copy of all correspondence related to the case to include final determinations; billing information to include payment delinquencies; and case notes. Information collected includes the individual's name, address, telephone number, and email address.

The records will be accessible only to authorized agency personnel who need to view the information in order to conduct their assigned duties. All electronic information is maintained by the Forest Service in a web-based database and stored on secured servers in Kansas City, Kansas. Hard copy records are retrieved by name and unique request identification number in lockable file cabinets in office buildings that require USDA employee identification badges or visitors passes to enter.

The system provides for the following routine use disclosures that are necessary and proper for the agency's administration of its duties in connection with the operation of the FOIA/PA program: in connection with a referral or consultation with another agency; in connection with litigation; for law enforcement purposes; for responses to Congressional inquiries; to the National Archives and Records Administration and the General Services Administration for records inspections; on a limited basis to entities engaged by the agency in the performance of a service; and in connection with information security breaches in order to protect the interests of the individuals covered by the system. While these routine uses allow disclosures outside USDA, and so have some impact on privacy of individuals, they are either necessary for carrying out the agency mission and minimizing waste, fraud, and abuse, are required by law, or benefit the subjects of the records. On balance, the needs of the agency and the benefits to the individuals of these disclosures justify the minimal impact on privacy.

The system of records is not exempt from any provisions of the Privacy Act.

[FR Doc. 2011–7724 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TM–11–0029; TM–11–02]

Notice of Request for Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for a new

information collection titled Data Collection for Container Availability.

DATES: Comments on this notice must be received by May 31, 2011 to be assured of consideration.

Additional Information or Comments: Contact April Taylor, Transportation Services Division, Transportation and Marketing Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1800 M Street, NW.—Room 3017 South, Washington, DC 20036, telephone 202–295–7374, fax 202–694–5948.

SUPPLEMENTARY INFORMATION:

Title: Data Collection for Container Availability.

OMB Number: 0581–[*New*].

Expiration Date of Approval: [*THREE YEARS FROM DATE OF OMB APPROVAL*].

Type of Request: New request for information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

As part of the Agricultural Marketing Service, the Transportation Services Division (TSD) provides insightful agricultural transportation information and analysis to help move agricultural products to market. TSD informs, represents, and assists agricultural shippers and government policymakers through: Market reports, representation, analysis, assistance, and responses to inquiries. TSD collects data for its analysis from public resources as well as unique data sources to help the agricultural exporters make the most out of the transportation options available.

The new Data Collection for Container Availability will provide U.S. agricultural exporters with weekly data detailing the availability of containers at select locations around the country. AMS will collect these data on a voluntary basis from ocean container carriers and then provide these up-to-date data in an aggregate report on its Web site. The goal of the report is to provide more transparency in the market for the location and availability of marine shipping containers for U.S. exporters. Exporters will be able to use this tool to make more knowledgeable decisions about which locations provide the best chance for finding available containers to move their products overseas.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.61 hours per response.

Respondents: Ocean Container/Liner Carriers and the Westbound Transpacific Stabilization Agreement.

Estimated Number of Respondents: 21.

Estimated Total Annual Responses: 1,092.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 1,759.26.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to April Taylor, Transportation Services Division, Transportation and Marketing Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1800 M Street, NW.—Room 3017 South, Washington, DC 20036, telephone 202–295–7374, fax 202–694–5948. All comments received will be available for public inspection during regular business hours at the same address.

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

Dated: March 28, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–7757 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–11–0006; NOP–11–03]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15-member board that is responsible for developing and recommending to the Secretary a proposed National List of Allowed and Prohibited Substances. The NOSB also advises the Secretary on all other aspects of the National Organic Program. The U.S. Department of Agriculture (USDA) is requesting nominations to fill five (5) upcoming vacancies on the NOSB. The positions to be filled are: Organic producer (1 position), organic handler (1 position), consumer/public interest (1 position), scientist (1 position), and an environmentalist (1 position). The Secretary of Agriculture will appoint a person to each position to serve a 5-year term of office that will commence on January 24, 2012, and run until January 24, 2017. USDA encourages eligible individuals who can demonstrate an ability to represent minorities, women, and persons with disabilities to apply for membership on the NOSB.

DATES: Written nominations, with cover letters and resumes, must be post-marked on or before July 17, 2011.

ADDRESSES: Nomination cover letters and resumes should be sent to Ms. Katherine E. Benham, Advisory Board Specialist, USDA–AMS–NOP, 1400 Independence Avenue, SW., Room 2651–So., Ag Stop 0268, Washington, DC 20250, or via e-mail to *Katherine.benham@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Katherine E. Benham, (202) 205–7806; E-mail: *katherine.benham@ams.usda.gov;* Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: The OFPA of 1990, as amended (7 U.S.C. 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The purpose of the NOSB is to assist in the development of a proposed National List of Allowed and Prohibited Substances and to advise the Secretary on other aspects of the National Organic Program.

The NOSB made recommendations to the Secretary regarding establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters, including recommendations on substances it believes should be allowed or prohibited for use in organic production and handling.

The NOSB is composed of 15 members; 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists, 3 public/consumer representatives, a scientist, and a certifying agent. Nominations are being sought to fill the following five (5) upcoming NOSB vacancies: organic producer (1 position), organic handler (1 position), consumer/public interest (1 position), scientist (1 position), and an environmentalist (1 position). Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic production operation, an owner or operator of an organic handling operation, an individual who represents public interest or consumer interest groups, an individual with expertise in areas of environmental protection and resource conservation, and an individual with expertise in the fields of toxicology, ecology, or biochemistry. Selection criteria will include such factors as: Demonstrated experience and interest in organic production; organic certification; support of consumer and public interest organizations; demonstrated experience with respect to agricultural products produced and handled on certified organic farms; and such other factors as may be appropriate for specific positions.

To nominate yourself or someone else, please submit at a minimum, a cover letter stating your interest and a copy of the nominee's resume. You may also submit a list of endorsements or letters of recommendation, if desired.

Nominees will be supplied with an AD–755 background information form that must be completed and returned to USDA within 10 working days of its receipt. Resumes and completed background information forms are required for a nominee to receive consideration for appointment by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that recommendations of the National Organic Standards Board take into account the needs of the diverse groups served by the Department, membership shall include individuals who can demonstrate an ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: March 28, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–7755 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0005]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Labeling

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), are sponsoring a public meeting on April 25, 2011. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 39th Session of the Codex Committee on Food Labeling (CCFL) of the Codex Alimentarius Commission (Codex), which will be held in Québec City, Canada May 9–13, 2011. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 39th session of the CCFL and to address items on the agenda.

DATES: The public meeting is scheduled for April 25, 2011, from 2 p.m. to 5 p.m.

ADDRESSES: The public meeting will be held at USDA, Jamie L. Whitten Building, 1400 Independence Ave SW., Room 107–A, Washington, DC 20250. Documents related to the 39th Session of the CCFL will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Barbara Schneeman, U.S. Delegate to the 39th Session of the CCFL and FDA, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *Barbara.Schneeman@fda.hhs.gov.*

Call-In Number: If you wish to participate in the public meeting for the 39th session of the CCFL by conference call, please use the following call-in number and participant code listed below:

Call-in Number: 1–866–692–3158

Participant Code: 5986642

For Further Information About the 39th Session of the CCFL Contact: Barbara Schneeman, Ph.D., Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, FDA, (HFS–800), 5100 Paint Branch Parkway, College Park, MD 20740, telephone: (301) 436–2373, fax: (301) 436–2636, e-mail: *Barbara.Schneeman@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: Doreen Chen-Moulec, U.S. Codex Office, 1400 Independence Avenue SW., Washington, DC 20250, telephone: (202) 205–7760, fax: (202) 720–3157, e-mail: *Doreen.chen-moulec@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFL Committee on Food Labeling is responsible for drafting provisions on labeling applicable to all foods; considering amending, if necessary, and endorsing draft specific provisions on labeling prepared by the Codex Committees drafting standards, codes of practice and guidelines; studying specific labeling problems assigned to it by Codex; studying problems associated with the advertisement of food with particular reference to claims and misleading descriptions.

The Committee is hosted by Canada.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 39th Session of the CCFL will be discussed during the public meeting:

- Matters referred to the CCFL.
- Consideration of labeling provisions in draft codex standards.
- Implementation of the WHO Global Strategy on Diet, Physical Activity and Health.

(a) Draft Revision of the Guidelines on Nutrition Labeling concerning the list of nutrients that are always declared on a voluntary or mandatory basis (at Step 7).

Recommendations on the declaration of sodium (salt).

(b) Discussion paper on additional conditions for nutrient content claims and comparative claims in the

Guidelines for Use of Nutrition and Health Claims.

(c) Consideration of the use of standardized symbols to represent the ingredients identified in the WHO Global Strategy.

(d) Mandatory nutrition labeling.

• Guidelines for the production, processing, labeling and marketing of organically produced foods.

(a) Annex 1: Inclusion of ethylene for other products at Step 7.

Use of ethylene for the ripening of fruit.

Justification against the criteria in section 5.1 regarding the use of ethylene for de-greening of citrus fruit, induction of flowering in pineapples and sprout inhibition in potatoes and onions.

(b) Annex II: Inclusion of new substances.

(c) Organic aquaculture.

• Labeling of foods and food ingredients obtained through certain techniques of Genetic Modification/Genetic Engineering.

(a) Draft Amendment to the General Standard for the Labeling of Prepacked Foods: Definitions (at Step 7).

(b) Proposed Draft Recommendations for the Labeling of Foods and Food Ingredients through Certain Techniques of Genetic Modification/Genetic Engineering (at Step 4).

• Proposed Draft Definition of Nutrient Reference Values Proposal and replies to Circulating Letter (CL) 2010/21–FL.

• Discussion paper on the need to amend the General Standard for the Labeling of Prepackaged Foods (Codex Stan 1–1985) in line with the International Organization of Legal Metrology (OIML) Recommendations regarding the declaration of the quantity of the product in prepackages.

• Modified Standardized Common Names.

• Discussion paper on exchange of information between competent authorities when suspecting fraud concerning organic products including replies to CL 2010/20–FL.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access these documents (*see* **ADDRESSES**).

Public Meeting

At the April 25, 2011, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 39th Session of the CCFL, Barbara Schneeman (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 39th Session of the CCFL.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, Federal Register notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: March 25, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–7645 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0006]

Codex Alimentarius Commission: Meeting of the Codex Committee on Fresh Fruits and Vegetables (CCFFV)

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Fruit and Vegetable Programs of the USDA Agricultural Marketing Service (AMS), are sponsoring a public meeting on April 5, 2011. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 16th session of the CCFFV of the Codex Alimentarius Commission (Codex), which will be held in Mexico City, Mexico from May 2–6, 2011. The Under Secretary for Food Safety and AMS recognize the importance of providing interested parties the opportunity to obtain background information on the 16th Session of the CCFFV and to address items on the agenda.

DATES: The public meeting is scheduled for April 5, 2011, from 10:30 a.m. to 12 noon.

ADDRESSES: The public meeting will be held at USDA, South Building, 1400 Independence Avenue, SW., Room 2068, Washington, DC 20250. Documents related to the 16th session of the CCFFV will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Dorian Lafond, U.S. Delegate to the 16th session of the CCFFV, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *Dorian.LaFond@ams.usda.gov.*

Call-In Number:

If you wish to participate in the public meeting for the 16th session of the CCFFV by conference call, please use the call-in number and participant code listed below:

Call-in Number: 1–866–692–3158

Participant code: 5986642

FOR FURTHER INFORMATION About the 16th Session of the CCFFV Contact:

Dorian Lafond, International Standards Coordinator, Fruit and Vegetable Programs, Office of the Administrator, AMS, USDA, 1400 Independence Avenue, SW., Washington, DC 20250, phone: (202) 690–4944 fax: (202) 720–4722, e-mail: *Dorian.Lafond@ams.usda.gov.*

For Further Information About the Public Meeting Contact: Kenneth Lowery, US Codex Office, 1400 Independence Avenue, SW., Room 4861, Washington, DC 20250, phone: (202) 690–4042, fax: (202) 720–3157, e-mail: *Kenneth.Lowery@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFFV is responsible for elaborating worldwide standards and codes of practice as may be appropriate for fresh fruits and vegetables, consulting with the United Nations Economic Commission for Europe (UNECE) Working Party on Agricultural Quality Standards in the elaboration of worldwide standards and codes of practice with particular regard to ensuring that there is no duplication of standards or codes of practice and that they follow the same broad format, and consulting as necessary with other international organizations which are active in the area of standardization of fresh fruits and vegetables.

The Committee is hosted by Mexico.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 16th session of the CCFFV will be discussed during the public meeting:

- Matters arising from Codex and other Codex Committees—Need for international Standard for Fresh Fungus "Chanterelle." Possible extension of territorial application of the Codex Standard for Fresh Fungus "Chanterelle".
- Matters arising from other International Organizations on the Standardization of Fresh Fruits and Vegetables.
- UNECE Standards for Fresh Fruits and Vegetables—UNECE Standard for Avocado.
- Draft Standard for Avocado.
- Draft Standard for Tree Tomatoes.
- Proposed Draft Standard for Chili Peppers.
- Proposed Draft Standard for Pomegranate.
- Proposed Layout for Codex Standards for Fresh Fruits and Vegetables.
- Discussion Paper on Point of Application of Codex Standards for Fresh Fruits and Vegetables including Quality Tolerances at Import and Export Control Points.
- Proposals for New Work on Codex Standards for Fresh Fruits and Vegetables.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access these documents (*see* **ADDRESSES**).

Public Meeting

At the April 5, 2011, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 16th session of the CCFFV, Dorian Lafond (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 16th session of the CCFFV.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: March 25, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–7646 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest, Lincoln County, MT; Miller West Fisher Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Forest Service will prepare a Supplemental Environmental Impact Statement (SEIS) for the Miller

West Fisher Project. The Project includes timber harvest, fuels reduction, precommercial thinning, prescribed fire, watershed rehabilitation activities, pool creation in Miller Creek, improvement of trails and trailheads, fuels management and hazard tree removal in Lake Creek Campground, and access management changes, including road decommissioning. The project is located in the Silverfish Planning Subunit on the Libby Ranger District, Kootenai National Forest, Lincoln County, Montana, and south of Libby, Montana. The Notice of Availability of the Draft EIS for this project was published in the **Federal Register** (vol. 74, no. 43) on March 6, 2009, and the notice of the Final EIS (vol. 74 no. 126) on July 2, 2009. The Record of Decision was issued in June of 2009. The Record of Decision was litigated in District Court for the District of Montana (CV 09–M–DWM) on issues regarding the grizzly bear analysis. The District Judge remanded the project to the Forest Service to address deficiencies in disclosures in the analysis. A Supplemental EIS is being prepared to address these disclosures in the grizzly bear analysis.

DATES: Scoping is not required for supplements to environmental impact statements [40 CFR 1502.9(c)(4)]. There was extensive public involvement in the development of the proposed action, the Draft EIS and the Final EIS, and the Forest Service is not inviting comments at this time. A Draft SEIS is expected to be available for public review and comment in May 2011; and a Final SEIS in June 2011.

ADDRESSES: The line officer responsible for this analysis is Malcolm Edwards, District Ranger, Libby Ranger District, 12557 MT Hwy 37, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Contact Leslie McDougall, Team Leader, Three Rivers Ranger District, at (406) 295–4693.

SUPPLEMENTARY INFORMATION: The Miller West Fisher Project Area is approximately 20 air miles south of Libby, Montana, within all or portions of T25N, R29W–R31W, T26N, R29W–R31W, T27N, R29W–R31W, PMM, Lincoln County, Montana.

The Miller West Fisher Project Supplemental EIS will provide additional information and disclosures on the grizzly bear analysis in support of the Record of Decision issued in June 2009. More specifically, the Supplemental EIS will provide clarification and additional information on the following disclosures as requested by the District Court of Montana:

1. Why the Bear Management Unit is the appropriate scale of analysis for cumulative effects;

2. Further discussion on the limitations of Wakkinen and Kasworm (1997) utilized as the Best Available Science in regard to grizzly bear habitat protection in the Cabinet-Yaak Ecosystem Grizzly Bear Recovery Zone;

3. Further explanation on how the Miller West Fisher Project was made compatible with grizzly bear needs, consistent with the Kootenai National Forest 1987 Forest Plan;

4. Address potential incidental take of grizzly bear in areas outside the recovery zone that are occupied by grizzly bears;

5. Provide further explanation for why helicopter logging would not cause harm to grizzly bear.

Record of Decision—Alternative 6-Modified

The Miller West Fisher Project Record of Decision issued in June 2009 authorized the following:

Vegetation treatments: Timber harvest and associated fuel treatment on 1,898 acres, including intermediate harvest on approximately 1,206 acres and regeneration harvest on approximately 692 acres; pre-commercial thinning will be implemented on approximately 351 acres; prescribed fire will be completed on 2,830 acres. These activities would contribute approximately 8.2 million board feet (MMBF) of timber products to the economy.

Transportation actions: Construction of 3.29 miles of temporary road for timber harvest, to be obliterated afterward; implementation of best management practices (BMPs) and road maintenance work will be applied to approximately 38.99 miles of haul roads; placing 19.2 miles of road into intermittent stored service; decommissioning 1.43 miles of road; access changes are included to address watershed impacts, increase big game security through reduction in open road density (ORD), and to create grizzly bear core habitat in bear management unit (BMU) 6.

Other activities: Pool creation in Miller Creek and stream bank stabilization in West Fisher Creek; improvement of trails and trailheads, including 5.9 miles of trail tread improvements for safety; fuels reduction and hazard tree removal in the Lake Creek Campground; spring development in the North Fork of Miller Creek; culvert replacement at the 0.5 milepost on Rd. 2314 to remove a barrier to fish and aquatic species.

Supplemental Environmental Impact Statement

A Draft SEIS is expected to be available for public review and comment in May 2011; and a Final SEIS in June 2011. The comment period for the Draft SEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Paul Bradford, Forest Supervisor of the Kootenai National Forest, 31374 US Hwy 2, Libby, MT 59923 is the Responsible Official for the Miller West Fisher Project.

Dated: March 24, 2011.

Maggie Pittman,

Acting Forest Supervisor, Kootenai National Forest.

[FR Doc. 2011–7751 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000, as amended, (Pub. L. 110–343), the Boise, Payette, Salmon-Challis, and Sawtooth National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

DATES: Thursday, April 21, 2011, beginning at 9 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Kim Pierson, Designated Federal Official, at (208) 347–0301 or e-mail *kpierson@fs.fed.us.*

Dated: March 24, 2011.

Suzanne C. Rainville,

Forest Supervisor, Payette National Forest.

[FR Doc. 2011–7748 Filed 3–31–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for May 2011

The following Sunset Reviews are scheduled for initiation in May 2011 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department contact
Antidumping Duty Proceedings	
Artist Canvas from the PRC (A–570–899)	Julia Hancock, (202) 482–1394.
Gray Portland Cement and Cement Clinker from Japan (A–588–815) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Countervailing Duty Proceedings	
No Sunset Review of countervailing duty orders are scheduled for initiation in May 2011.	
Suspended Investigations	
No Sunset Review of suspended investigations are scheduled for initiation in May 2011.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 25, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7760 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with section 351.213 of the Department of Commerce ("the Department") regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within seven days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

Opportunity To Request a Review: Not later than the last day of April 2011,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period of review
Antidumping Duty Proceedings	
India: 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) A–533–847	4/1/10–3/31/11
Norway: Fresh and Chilled Atlantic Salmon A–403–801	4/1/10–3/31/11
The People's Republic of China:	
Activated Carbon A–570–904	4/1/10–3/31/11
Certain Steel Threaded Rod A–570–932	4/1/10–3/31/11
Frontseating Service Valves A–570–933	4/1/10–3/31/11
1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) A–570–934	4/1/10–3/31/11
Magnesium Metal A–570–896	4/1/10–3/31/11
Non-Malleable Cast Iron Pipe Fittings A–570–875	4/1/10–3/31/11
Russia: Magnesium Metal A–821–819	4/1/10–4/14/10
Countervailing Duty Proceedings	
Norway: Fresh and Chilled Atlantic Salmon C–403–802	1/1/10–12/31/10

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii) of the regulations.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy country and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Duty Operations, Attention: Sheila Forbes, in room 3508 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of April 2011. If the Department does not receive, by the last day of April 2011, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 28, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7758 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Davis, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7924.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2010, the Department of Commerce (the Department) published in the **Federal Register** the initiation of the administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Mexico, covering the period of August 1, 2009, to July 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 60076 (September 29, 2010). The current deadline for the preliminary results of this review is May 3, 2011.

Extension of Time Limits for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245 day time period for the preliminary results up to 365 days.

The Department finds that it is not practicable to complete the preliminary results of this review within the original time frame because additional information from both mandatory respondents, Regiomontana de Perfiles S.A. de C.V. (Regiomontana) and Maquilacero S.A. de C.V. (Maquilacero), is necessary to complete our analysis. Because the Department requires additional time to obtain and analyze this information, it is not practicable to complete this review within the original time limit (*i.e.,* May 3, 2011). Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than August 31, 2011, which is 365 days from the last day of the anniversary month of this order. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 28, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7802 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet and Strip From India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Elfi Blum, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197.

Background

On August 31, 2010, the Department of Commerce (Department) published a notice of initiation of an administrative review under the antidumping duty order on polyethylene terephthalate film, sheet and strip from India covering the period July 1, 2009, through June 30, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review,* 75 FR 53274 (August 31, 2010). The Department initiated the review with respect to two companies, Ester Industries Limited and SRF Limited. SRF Limited has since withdrawn its request for review. The preliminary results of the review of Ester Industries Limited are currently due no later than April 2, 2011.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the preliminary results of the review within the aforementioned time limit, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the preliminary results of this review within the original time limit. The Department needs additional time to analyze the extensive questionnaire responses that were submitted, and we anticipate issuing additional supplemental questionnaires. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 245 days to 365 days. The preliminary results will now be due no later than July 31, 2011. However, July 31, 2011, falls on a Sunday, and it is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for the completion of the preliminary results is now August 1, 2011. Unless extended, the final results continue to be due 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 28, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7801 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–811]

Purified Carboxymethylcellulose From the Netherlands: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Dena Crossland, Brian Davis, or Angelica Mendoza, Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–3362, (202) 482–7924, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2010, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from the Netherlands. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review,* 75 FR 53274 (August 31, 2010). This review covers the period July 1, 2009, through June 30, 2010. The preliminary results for this administrative review are currently scheduled for April 2, 2011.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245 day time period for the preliminary results up to 365 days.

The Department has determined it is not practicable to complete this review within the statutory time limit because we require additional time to collect and analyze additional information regarding Akzo Nobel Functional Chemicals B.V.'s calculation of certain expenses, needed for our preliminary results. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than June 16, 2011, which is 320 days from the last day of the anniversary month of this order. We intend to issue the final results in this review no later than 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 25, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7790 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet and Strip From India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Toni Page, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1398.

Background

On August 31, 2010, the Department of Commerce (Department) published a notice of initiation of an administrative review under the countervailing duty order on polyethylene terephthalate film, sheet and strip from India covering the period January 1, 2009, through December 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review,* 75 FR 53274 (August 31, 2010). The Department initiated the review with respect to two companies, Ester Industries Limited and SRF Limited. SRF Limited has since withdrawn its request for review. The preliminary results of the review of Ester Industries Limited are currently due no later than April 2, 2011.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue preliminary results in an administrative review of a countervailing duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the preliminary results of the review within the aforementioned time limit, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the preliminary results of this review within the original time limit. The Department needs additional time

to analyze the extensive questionnaire responses that were submitted, and we anticipate issuing additional supplemental questionnaires. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 245 days to 365 days. The preliminary results will now be due no later than July 31, 2011. However, July 31, 2011, falls on a Sunday, and it is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for the completion of the preliminary results is now August 1, 2011. Unless extended, the final results continue to be due 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 28, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7799 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838, A–533–840, A–549–822]

Certain Frozen Warmwater Shrimp From Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) received timely requests to conduct administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp (shrimp) from Brazil, India and Thailand. The anniversary month of these orders is February. In accordance with 19 CFR 351.221, we are initiating these administrative reviews.

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929 (Brazil), Henry Almond at (202) 482–0049 (India), and Holly Phelps at (202) 482–0656 (Thailand), AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

During the anniversary month of February 2011, the Department received timely requests for administrative reviews of the antidumping duty orders on shrimp from Brazil, India, and Thailand from the Ad Hoc Shrimp Trade Action Committee (hereinafter, Domestic Producers), the American Shrimp Processors Association (ASPA), and certain individual companies, in accordance with 19 CFR 351.213(b). The Department is now initiating administrative reviews of these orders covering multiple companies for Brazil, India, and Thailand, as noted in the "Initiation of Reviews" section of this notice.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Request To Defer Review

In their requests for administrative review, the following Thai companies requested that the Department defer the initiation of the review for one year, pursuant to 19 CFR 351.213(c): Marine Gold Products Co., Ltd. (Marine Gold); Pakfood Public Company Limited and its affiliated subsidiaries (collectively, "Pakfood");[1] and Thai Royal Frozen Food Co., Ltd. (Thai Royal). None of the parties provided any justification for its deferral request.

The Department's regulations, as set forth in 19 CFR 351.213(c)(1)(i) and (ii), provide that the Department may defer the initiation of an antidumping duty administrative review, in whole or in part, for one year if: (1) The request for review was accompanied by a request to defer the review; and (2) neither the exporter or producer for which the deferral is requested, the importer of subject merchandise from that exporter or producer, or a domestic interested party objected to the deferral.

On March 15, 2011, the Domestic Producers and the ASPA submitted timely comments objecting to the deferral of the administrative review with respect to each of the three companies named above. The Domestic Producers also objected to the deferral of review for any other company for which they requested that the Department conduct a review. Because we received a timely objection to deferral from a domestic interested party pursuant to 19 CFR 351.213(c)(1)(ii) and (2), we have not deferred the instant review with respect to Marine Gold, Pakfood, or Thai Royal.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it should notify the Department in writing within 60 days of publication of this notice in the **Federal Register**. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Act. Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination in these administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

Request for Review of Non-Existent Company

We have not initiated an administrative review of the order on shrimp from India with respect to Vaibhav Sea Foods because in the 2004–2006 administrative review the Department determined that this company no longer exists. *See Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 52055, (Sept. 12, 2007)

[1] These subsidiaries are: Asia Pacific (Thailand) Company Ltd., Chaophraya Cold Storage Co., Ltd., Okeanos Co., Ltd., Okeanos Food Co., Ltd., and Takzin Samut Co., Ltd.

(*2004–2006 Indian Shrimp Final Results*).

Initiation of Reviews

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), we are initiating administrative reviews of the antidumping duty orders on shrimp from Brazil, India and Thailand. We intend to issue the final results of these reviews by February 29, 2012.

	Period to be reviewed
Antidumping Duty Proceeding	
Brazil:	
Certain Frozen Warmwater Shrimp, A–351–838	2/1/10–1/31/11
Amazonas Industria Alimenticias SA.	
Comissaria Eichenberg Ltda.	
Eco Acuicola Sac.	
Leardini Pescados Ltda.	
New Symbol Comercio E Exportacao de Pescados Ltda.	
Pereira Argentina S.A.	
Railson Pesca e Exportacao Ltd.	
India:	
Certain Frozen Warmwater Shrimp, A–533–840	2/1/10–1/31/11
Abad Fisheries.	
Accelerated Freeze-Drying C.	
Adilakshmi Enterprises.	
Allana Frozen Foods Pvt. Ltd.	
Allansons Ltd.	
AMI Enterprises.	
Amulya Sea Foods.	
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods.[1]	
Anand Aqua Exports.	
Andaman Seafoods Pvt. Ltd.[2]	
Angelique Intl.	
Anjaneya Seafoods.	
Apex Exports.[2]	
Arvi Import & Export.	
Asvini Exports.	
Asvini Fisheries Private Limited.	
Avanti Feeds Limited.	
Ayshwarya Seafood Private Limited.	
Baby Marine Exports.	
Baby Marine International.	
Baby Marine Sarass.	
Bhatsons Aquatic Products.	
Bhavani Seafoods.	
Bijaya Marine Products.	
Blue Water Foods & Exports P. Ltd.	
Bluefin Enterprises.	
Bluepark Seafoods Private Ltd.	
BMR Exports.	
Britto Exports.	
C P Aquaculture (India) Ltd.	
Calcutta Seafoods Pvt. Ltd.[2]	
Capithan Exporting Co.	
Castlerock Fisheries Ltd.	
Chemmeens (Regd).	
Cherukattu Industries (Marine Div.).	
Choice Canning Company.	
Choice Trading Corporation Private Limited.[2]	
Coastal Corporation Ltd.	
Cochin Frozen Food Exports Pvt. Ltd.	
Coreline Exports.	
Corlim Marine Exports Pvt. Ltd.	
Damco India Private.	
Devi Fisheries Limited.	
Devi Marine Food Exports Private Ltd./Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd./Premier Marine Products/Universal Cold Storage Private Limited.[2 3]	
Diamond Seafood Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company.[2 4]	
Digha Seafood Exports.	
Esmario Export Enterprises.	
Exporter Coreline Exports.	
Falcon Marine Exports Limited/K.R. Enterprises.[2 5]	
Five Star Marine Exports Private Limited.	
Forstar Frozen Foods Pvt. Ltd.	
Frontline Exports Pvt. Ltd.	
G A Randerian Ltd.	

	Period to be reviewed
Gadre Marine Exports.	
Galaxy Maritech Exports P. Ltd.	
Gayatri Seafoods.	
Geo Aquatic Products (P) Ltd.	
Geo Seafoods.	
Goodwill Enterprises.	
Grandtrust Overseas (P) Ltd.	
GVR Exports Pvt. Ltd.	
Haripriya Marine Exports Pvt. Ltd.[2]	
Harmony Spices Pvt. Ltd.	
HIC ABF Special Foods Pvt. Ltd.	
Hindustan Lever, Ltd.	
Hiravata Ice & Cold Storage.	
Hiravati Exports Pvt. Ltd.	
Hiravati International P. Ltd. (located at APM—Mafco Yard, Sector—18, Vashi, Navi, Mumbai—400 705, India).	
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India).	
IFB Agro Industries Ltd.[2]	
Indian Aquatic Products.	
Indo Aquatics.	
Innovative Foods Limited.	
International Freezefish Exports.	
Interseas.	
ITC Ltd.	
ITC Limited, International Business.	
Jagadeesh Marine Exports.	
Jaya Satya Marine Exports.	
Jaya Satya Marine Exports Pvt. Ltd.	
Jayalakshmi Sea Foods Private Limited.[2]	
Jinny Marine Traders.	
Jiya Packagings.	
K R M Marine Exports Ltd.	
Kalyanee Marine.	
Kanch Ghar.	
Kay Kay Exports.	
Kings Marine Products.[2]	
Koluthara Exports Ltd.	
Konark Aquatics & Exports Pvt. Ltd.	
Landauer Ltd.	
Libran Cold Storages (P) Ltd.	
Magnum Estates Limited.[2]	
Magnum Export.	
Magnum Sea Foods Limited.[2]	
Malabar Arabian Fisheries.	
Malnad Exports Pvt. Ltd.	
Mangala Marine Exim India Pvt. Ltd.	
Mangala Sea Products.	
Meenaxi Fisheries Pvt. Ltd.	
MSC Marine Exporters.	
MSRDR Exports.	
MTR Foods.	
N.C. John & Sons (P) Ltd.	
Naga Hanuman Fish Packers.	
Naik Frozen Foods.	
Naik Frozen Foods Pvt., Ltd.	
Naik Seafoods Ltd.	
Navayuga Exports.	
Nekkanti Sea Foods Limited.	
NGR Aqua International.	
Nila Sea Foods Pvt. Ltd.	
Nine Up Frozen Foods.	
Overseas Marine Export.	
Paragon Sea Foods Pvt. Ltd.	
Penver Products (P) Ltd.	
Pijikay International Exports P Ltd.	
Pisces Seafood International.	
Premier Exports International.	
Premier Marine Foods.	
Premier Seafoods Exim (P) Ltd.	
R V R Marine Products Private Limited.	
Raa Systems Pvt. Ltd.	
Raju Exports.	
Ram's Assorted Cold Storage Ltd.[2]	
Raunaq Ice & Cold Storage.	

	Period to be reviewed
Raysons Aquatics Pvt. Ltd.	
Razban Seafoods Ltd.	
RBT Exports.	
RDR Exports.	
Riviera Exports Pvt. Ltd.	
Rohi Marine Private Ltd.	
S & S Seafoods.	
S. A. Exports.	
S Chanchala Combines.	
Safa Enterprises.	
Sagar Foods.	
Sagar Grandhi Exports Pvt. Ltd.	
Sagar Samrat Seafoods.	
Sagarvihar Fisheries Pvt. Ltd.	
SAI Marine Exports Pvt. Ltd.[2]	
SAI Sea Foods.[2]	
Sandhya Aqua Exports.	
Sandhya Aqua Exports Pvt. Ltd.[2]	
Sandhya Marines Limited.	
Santhi Fisheries & Exports Ltd.	
Satya Seafoods Private Limited.	
Sawant Food Products.	
Seagold Overseas Pvt. Ltd.	
Selvam Exports Private Limited.	
Sharat Industries Ltd.	
Shimpo Exports.[2]	
Shippers Exports.	
Shroff Processed Food & Cold Storage P Ltd.	
Silver Seafood.	
Sita Marine Exports.	
Sowmya Agri Marine Exports.	
Sprint Exports Pvt. Ltd.[2]	
Sri Chandrakantha Marine Exports.[2]	
Sri Sakkthi Cold Storage.	
Sri Sakthi Marine Products P Ltd.	
Sri Satya Marine Exports.	
Sri Venkata Padmavathi Marine Foods Pvt. Ltd.	
Srikanth International.	
SSF Ltd.	
Star Agro Marine Exports Private Limited.	
Sun-Bio Technology Ltd.	
Suryamitra Exim (P) Ltd.	
Suvarna Rekha Exports Private Limited.	
Suvarna Rekha Marines P Ltd.	
TBR Exports Pvt Ltd.	
Teekay Marine P. Ltd.[2]	
Tejaswani Enterprises.	
The Waterbase Ltd.	
Triveni Fisheries P Ltd.	
Uniroyal Marine Exports Ltd.	
Universal Cold Storage (P) Ltd.	
Usha Seafoods.	
V.S Exim Pvt Ltd.	
Veejay Impex.	
Victoria Marine & Agro Exports Ltd.	
Vinner Marine.	
Vishal Exports.	
Wellcome Fisheries Limited.	
West Coast Frozen Foods Private Limited.	
Thailand	
Certain Frozen Warmwater Shrimp, A–549–822	2/1/10–1/31/11
A Foods 1991 Co., Ltd./May Ao Co., Ltd./May Ao Foods Co., Ltd.[6]	
A. Wattanachai Frozen Products.[7]	
A. Wattanachai Frozen Products Co., Ltd.[7]	
A.S. Intermarine Foods Co., Ltd.	
ACU Transport Co., Ltd.	
Anglo-Siam Seafoods Co., Ltd.	
Apex Maritime (Thailand) Co., Ltd.	
Apitoon Enterprise Industry Co., Ltd.	
Applied DB.	
Asian Seafood Coldstorage (Sriracha).	
Asian Seafoods Coldstorage Public Co., Ltd./Asian Seafoods Coldstorage (Suratthani) Co./STC Foodpak Ltd.[7]	
Assoc. Commercial Systems.	

	Period to be reviewed
B.S.A. Food Products Co., Ltd.	
Bangkok Dehydrated Marine Product Co., Ltd.	
C Y Frozen Food Co., Ltd.	
C.P. Merchandising Co., Ltd.[8]	
Calsonic Kansei (Thailand) Co., Ltd.	
Century Industries Co., Ltd.	
Chaivaree Marine Products Co., Ltd.	
Chaiwarut Company Limited.	
Charoen Pokphand Foods Public Co., Ltd.	
Chonburi LC.	
Chue Eie Mong Eak.	
Core Seafood Processing Co., Ltd.	
CP Retailing and Marketing Co., Ltd.	
Crystal Frozen Foods Co., Ltd. and/or Crystal Seafood.	
Daedong (Thailand) Co. Ltd.	
Daiei Taigen (Thailand) Co., Ltd.	
Daiho (Thailand) Co., Ltd.	
Dynamic Intertransport Co., Ltd.	
Earth Food Manufacturing Co., Ltd.	
F.A.I.T. Corporation Limited.	
Far East Cold Storage Co., Ltd.	
Findus (Thailand) Ltd.	
Fortune Frozen Foods (Thailand) Co., Ltd.	
Frozen Marine Products Co., Ltd.	
Gallant Ocean (Thailand) Co., Ltd.	
Gallant Seafoods Corporation.	
Global Maharaja Co., Ltd.	
Golden Sea Frozen Foods.[7]	
Golden Sea Frozen Foods Co., Ltd.[7]	
Good Fortune Cold Storage Co., Ltd.	
Good Luck Product Co., Ltd.	
Grobest Frozen Foods Co., Ltd.	
GSE Lining Technology Co., Ltd.	
Gulf Coast Crab Intl.	
H.A.M. International Co., Ltd.	
Haitai Seafood Co., Ltd.	
Handy International (Thailand) Co., Ltd.	
Heng Seafood Limited Partnership.	
Heritrade.	
HIC (Thailand) Co., Ltd.	
High Way International Co., Ltd.	
I.T. Foods Industries Co., Ltd.	
Inter-Oceanic Resources Co., Ltd.	
Inter-Pacific Marine Products Co., Ltd.	
K & U Enterprise Co., Ltd.	
K Fresh.	
K. D. Trading Co., Ltd.	
K.L. Cold Storage Co., Ltd.	
KF Foods.	
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd.	
Kibun Trdg.	
Kingfisher Holdings Ltd.	
Kitchens of the Ocean (Thailand) Ltd.[7]	
Kitchens of the Oceans (Thailand) Ltd.[7]	
Klang Co., Ltd.	
Kongphop Frozen Foods Co., Ltd.	
Kosamut Frozen Foods Co., Ltd.[7]	
Lee Heng Seafood Co., Ltd.	
Leo Transports.	
Li-Thai Frozen Foods Co., Ltd.	
Lucky Union Foods Co., Ltd.	
Maersk Line.	
Magnate & Syndicate Co., Ltd.	
Mahachai Food Processing Co., Ltd.	
Marine Gold Products Co., Ltd.	
Merit Asia Foodstuff Co., Ltd.	
Merkur Co., Ltd.	
Ming Chao Ind Thailand.	
N&N Foods Co., Ltd.	
Namprik Maesri Ltd. Part.	
Narong Seafood Co., Ltd.	
Nongmon SMJ Products.	
NR Instant Produce Co., Ltd.	

	Period to be reviewed
Ongkorn Cold Storage Co., Ltd./Thai-Ger Marine Co., Ltd.	
Pacific Queen Co., Ltd.	
Pakfood Public Company Limited/Asia Pacific (Thailand) Co., Ltd./Chaophraya Cold Storage Co., Ltd./Okeanos Co., Ltd./Okeanos Food Co., Ltd./and Takzin Samut Co., Ltd.[9]	
Penta Impex Co., Ltd.	
Pinwood Nineteen Ninety Nine.	
Piti Seafoods Co., Ltd.	
Premier Frozen Products Co., Ltd.	
Preserved Food Specialty Co., Ltd.	
Queen Marine Food Co., Ltd.	
Rayong Coldstorage (1987) Co., Ltd.	
S&D Marine Products Co., Ltd.	
S&P Aquarium.	
S&P Syndicate Public Company Ltd.	
S. Chaivaree Cold Storage Co., Ltd.	
S. Khonkaen Food Industry Public Co., Ltd. and/or S. Khonkaen Food Ind Public.	
Samui Foods Company Limited.	
SCT Co., Ltd.	
Sea Bonanza Food Co., Ltd.	
SEA NT'L CO., LTD.	
Seafoods Enterprise Co., Ltd.	
Seafresh Fisheries/Seafresh Industry Public Co., Ltd.	
Search & Serve.	
Shianlin Bangkok Co., Ltd.	
Shing Fu Seaproducts Development Co.	
Siam Food Supply Co., Ltd.	
Siam Intersea Co., Ltd.	
Siam Marine Products Co. Ltd.	
Siam Ocean Frozen Foods Co. Ltd.	
Siam Union Frozen Foods.[7]	
Siamchai International Food Co., Ltd.	
Smile Heart Foods Co. Ltd.	
SMP Foods Products Co., Ltd.[7]	
SMP Food Products Co., Ltd.[7]	
Southport Seafood Co., Ltd.[8]	
Star Frozen Foods Co., Ltd.	
Starfoods Industries Co., Ltd.	
Suntechthai Intertrading Co., Ltd.	
Surapon Nichirei Foods Co., Ltd.	
Surapon Seafood.[7]	
Surapon Seafoods Public Co., Ltd./Surapon Foods Public Co., Ltd./Surat Seafoods Co., Ltd.[7]	
Suratthani Marine Products Co., Ltd	
Suree Interfoods Co., Ltd.	
T.S.F. Seafood Co., Ltd.	
Tanaya International Co., Ltd.	
Tanaya Intl.	
Tep Kinsho Foods Co., Ltd.	
Teppitak Seafood Co., Ltd.	
Tey Seng Cold Storage Co., Ltd.	
Thai Agri Foods Public Co., Ltd.	
Thai Mahachai Seafood Products Co., Ltd.	
Thai Ocean Venture Co., Ltd.	
Thai Patana Frozen.	
Thai Prawn Culture Center Co., Ltd.	
Thai Royal Frozen Food Co., Ltd.	
Thai Spring Fish Co., Ltd.	
Thai Union Frozen Products Public Company Ltd./Thai Union Seafood Co., Ltd.[8]	
Thai Union Manufacturing Company Limited.	
Thai World Imp. & Exp. Co.[7]	
Thai World Imports & Exports.[7]	
Thai Yoo Ltd., Part.	
The Siam Union Frozen Foods Co., Ltd.[7]	
The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd.[11]	
Trang Seafood Products Public Co., Ltd.	
Transamut Food Co., Ltd.	
Tung Lieng Trdg.	
United Cold Storage Co., Ltd.	
V Thai Food Product.	
Xian-Ning Seafood Co., Ltd.	
Yeenin Frozen Foods Co., Ltd.	
YHS Singapore Pte.	

	Period to be reviewed
ZAFCO TRDG.	

[1] In the 2007–2008 administrative review, the Department found that the following companies comprised a single entity: Ananda Aqua Exports (P) Ltd., Ananda Foods, and Ananda Aqua Applications. *See Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 9991, 9994 (Mar. 9, 2009) (*2007–2008 Indian Shrimp Preliminary Results*) unchanged in *Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 33409 (July 13, 2009) (*2007–2008 Indian Shrimp Final Results*). Absent information to the contrary, we intend to treat these companies as a single entity for purposes of this administrative review.

[2] The interested parties' requests for review included certain companies with similar names and/or addresses. For purposes of initiation, we have treated these companies as the same entity based on information obtained in prior administrative reviews. *See* the March 28, 2011, memorandum from David Crespo to the File entitled, "Placing Public Information from Prior Antidumping Duty Administrative Reviews on the Record of the 2010–2011 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India."

[3] In the 2004–2006 administrative review, the Department found that the following companies comprised a single entity: Devi Marine Food Exports Private Limited, Kader Investment and Trading Company Private Limited, Kader Exports Private Limited, Liberty Frozen Foods Private Limited, Liberty Oil Mills Limited, Premier Marine Products, and Universal Cold Storage Private Limited. *See 2004–2006 Indian Shrimp Final Results,* 72 FR at 52058. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[4] In the 2006–2007 administrative review, the Department found that the following companies comprised a single entity: Diamond Seafoods Exports, Edhayam Frozen Foods Pvt. Ltd., Kadalkanny Frozen Foods, and Theva & Company. *See Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12103, 12106 (Mar. 6, 2008), unchanged in *Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 40492 (July 15, 2008). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[5] In the 2007–2008 administrative review, the Department found that the following companies comprised a single entity: Falcon Marine Exports Limited and K.R. Enterprises. *See 2007–2008 Indian Shrimp Preliminary Results,* 74 FR at 9994, unchanged in *2007–2008 Indian Shrimp Final Results,* 74 FR at 33409. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[6] On December 1, 2010, the Department found that A Foods 1991 Co., Limited is the successor-in-interest to May Ao Company Limited. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from Thailand,* 75 FR 74684 (Dec. 1, 2010). Because the effective date of this determination is within the period of review (POR), we have included both A Foods 1991 Co., Limited and May Ao Company Limited for purposes of initiation.

[7] The requests for review from the interested parties included certain companies with similar names and/or addresses. We have contacted these companies for clarification regarding their correct names and/or addresses. Pending receipt of this information, we have treated these companies as separate entities for purposes of initiation.

[8] The requests for review from the interested parties included certain companies with similar names and/or addresses. For purposes of initiation, we have treated these companies as the same entity based on information obtained prior to initiation of this administrative review.

[9] In the 2007–2008 administrative review, the Department found that the following companies comprised a single entity: Pakfood Public Company Limited, Asia Pacific (Thailand) Co., Ltd., Chaophraya Cold Storage Co. Ltd., Okeanos Co. Ltd., Okeanos Food Co. Ltd., and Takzin Samut Co. Ltd. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47551 (Sept. 16, 2009), and accompanying Issues and Decision memorandum at Comment 6. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[10] In the 2006–2007 administrative review, the Department found that the following companies comprised a single entity: Thai Union Frozen Products Public Co., Ltd. and Thai Union Seafood Co., Ltd. *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12088 (Mar. 6, 2008), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 50933 (Aug. 29, 2008). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[11] In the less-than-fair-value investigation, the Department found that the following companies comprised a single entity: The Union Frozen Products Co., Ltd. and Bright Sea Co., Ltd. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 47100 (Aug. 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (Dec. 23, 2004). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491* (February 10, 2011) (*Interim Final Rule*) amending 19 CFR 351.303(g)(1) & (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This initiation and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(c)(1)(i).

Dated: March 28, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7763 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping and countervailing duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–588–850 ..	731–TA–847	Japan	Carbon & Alloy Seamless, Standard Line & Pressure Pipe (Over 4½ Inches) (2nd Review).	David Goldberger, (202) 482–4136.
A–588–851 ..	731–TA–847	Japan	Carbon & Alloy Seamless, Standard, Line & Pressure Pipe (Under 4½ Inches) (2nd Review).	David Goldberger, (202) 482–4136.
A–485–805 ..	731–TA–849	Romania	Carbon & Alloy Seamless, Standard, Line & Pressure Pipe (Under 4½ Inches) (2nd Review).	David Goldberger, (202) 482–4136.
A–533–806 ..	731–TA–561	India	Sulfanilic Acid (3rd Review)	Julia Hancock, (202) 482–1394.
A–570–815 ..	731–TA–538	PRC	Sulfanilic Acid (3rd Review)	Julia Hancock, (202) 482–1394.
C–533–807 ..	701–TA–318	India	Sulfanilic Acid (3rd Review)	David Goldberger, (202) 482–4136.

Filing Information

As a courtesy, we are making information related to Sunset Review proceedings, including copies of the pertinent statue and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "*http://ia.ita.doc.gov/sunset/.*" All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an antidumping duty/countervailing duty ("AD/CVD") proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in investigations/proceedings initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct

from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning AD and CVD proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: March 25, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7761 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Public Comments Concerning Regulatory Cooperation Activities That Would Help Eliminate or Reduce Unnecessary Regulatory Divergences in North America That Disrupt U.S. Exports

AGENCY: International Trade Administration, Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: This notice announces an extension of the request for public comment to the **Federal Register** notice on regulatory cooperation activities in North America. The comment period is extended to April 18, 2011.

DATES: The comment period for notice published on March 3, 2011 (76 FR 11760), is extended to April 18, 2011.

ADDRESSES: Submissions should be made via the internet at *http://www.regulations.gov* under docket ITA–2011–0003. Please direct written submissions to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230. The public is strongly encouraged to file submissions electronically rather than by mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to *regcoop@trade.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Commerce (DOC) published a document in the **Federal Register** on March 3, 2011, inviting public comment on the following possible types of cooperative regulatory activities between or among the United States, Mexico, and Canada: Information-sharing agreements; technical assistance; memoranda of understanding, mutual recognition agreements; collaboration between regulators before initiating rulemaking proceedings; agreements to align particular regulatory measures; equivalency arrangements; and accreditation of testing laboratories or other conformity assessment bodies. These comments will serve as a basis for bilateral and trilateral discussion with Canada and Mexico on regulatory cooperation activities to undertake which will support the President's National Export Initiative and serve as a basis for discussion with the U.S.-Mexico High-Level Regulatory Cooperation Council and the U.S.-Canada Regulatory Cooperation Council.

The notice published on March 3, 2011 (76 FR 11760) informed interested parties that DOC would accept written comments no later than April 4, 2011. Associations and organizations with an interest in these activities have expressed concerns with the 30-day deadline and have requested an extension. Based on these requests, DOC is extending the comment period until April 18, 2011, to provide interested parties additional time to prepare and submit comments. DOC will accept comments received no later than April 18, 2011 and will not consider any further extensions to the comment period.

Requirements for Submissions: In order to ensure the timely receipt and consideration of comments, the Department of Commerce's International Trade Administration (ITA) strongly encourages commenters to make on-line submissions, using the *www.regulations.gov* Web site. Comments should be submitted under docket number ITA–2011–0003. To find this docket, enter the docket number in the "Enter Keyword or ID" window at the *www.regulations.gov* home page and click "Search." The site will provide a search-results page listing all documents associated with that docket number. Find a reference to this notice by selecting "Notice" under "Document Type" on the search-results page, and click on the link entitled "Submit a Comment." The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. ITA prefers submissions to be provided in an attached document. (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the "Help" tab.)

All comments and recommendations submitted in response to this notice will be made available to the public. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC". The top of any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL". Any person filing comments that contain business confidential information must also file in a separate submission a public version of the comments. The file name of the public version of the comments should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments. If a comment contains no business confidential information, the file name should begin with the character "P", followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

Dated: March 29, 2011.

John Andersen,

Acting Deputy Assistant Secretary of Commerce for Market Access and Compliance, International Trade Administration.

[FR Doc. 2011–7849 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will hold a meeting via teleconference on Monday, April 25, 2011 from 1 p.m. to 4 p.m. Eastern Daylight Time (EDT). The primary purpose of this meeting is to review the Committee's draft annual report to the NIST Director. The draft report will be posted on the NEHRP Web site at *http://nehrp.gov/.* Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

DATES: The ACEHR will hold a meeting via teleconference on Monday, April 25, 2011, from 1 p.m. until 4 p.m. Eastern Daylight Time (EDT).

ADDRESSES: Questions regarding the meeting should be sent to National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. Dr. Hayes' e-mail address is *jack.hayes@nist.gov* and his phone number is (301) 975–5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108–360). The Committee is composed of 14 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex-officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities (improved design and construction methods and practices; land use controls and redevelopment; prediction techniques and early-warning systems; coordinated emergency preparedness plans; and public education and involvement programs);
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at *http://nehrp.gov/.*

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the ACEHR will hold a meeting via teleconference on Monday, April 25, 2011, from 1 p.m. until 4 p.m. Eastern Daylight Time (EDT). There will be no central meeting location. The public is invited to participate in the meeting by calling in from remote locations. The primary purpose of this meeting is to review the Committee's draft annual report to the NIST Director. The draft report will be posted on the NEHRP Web site at *http://nehrp.gov/.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request detailed instructions by contacting Michelle Harman on how to dial in from a remote location to participate in the meeting. Michelle Harman's e-mail address is *michelle.harman@nist.gov,* and her phone number is 301–975–5324. Approximately fifteen minutes will be reserved from 3:45 p.m.–4 p.m. Eastern Daylight Time (EDT) for public comments; speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those who were unable to participate are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899–8604, via fax at (301) 975–5433, or electronically by e-mail to *info@nehrp.gov.*

All participants of the meeting are required to pre-register to be admitted. Anyone wishing to participate must register by close of business Wednesday, April 20, 2011, in order to be admitted. Please submit your name, e-mail address, and phone number to Michelle Harman. After registering, participants will be provided with detailed instructions on how to dial in from a remote location in order to participate. Michelle Harman's e-mail address is *michelle.harman@nist.gov*, and her phone number is (301) 975–5324.

Dated: March 24, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–7744 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Technology Innovation Program Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Technology Innovation Program Advisory Board, National Institute of Standards and Technology (NIST) will meet in open session on Tuesday, May 18, 2011, from 8:30 a.m. to 3:30 p.m. Eastern daylight savings time.

DATES: The meeting will convene Wednesday, May 18, 2011, at 8:30 a.m. and will adjourn at 3:30 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Portrait Room, Building 101, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Rene Cesaro, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2162. Ms. Cesaro's e-mail address is *rene.cesaro@nist.gov.*

SUPPLEMENTARY INFORMATION: The Technology Innovation Program (TIP) Advisory Board is composed of ten members appointed by the Director of NIST who are eminent in such fields as business, research, science and technology, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Technology Innovation Program, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a TIP update, a presentation on the status of TIP's current project portfolio, and a discussion of potential critical national need areas for future funding. The agenda may change to accommodate Board business. The final agenda will be posted on the TIP Web site at: *http://*

www.nist.gov/tip/. Individuals and representatives of organizations who would like to offer comments and suggestions related to the Board's affairs are invited to request a place on the agenda. On May 18, 2011, approximately one-half hour will be reserved for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about three minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the TIP Advisory Board, National Institute of Standards and Technology, 100 Bureau Drive, MS 4700, Gaithersburg, Maryland 20899, via fax at (301) 975–4032, or electronically by e-mail to (*lorel.wisniewski@nist.gov*). All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Rene Cesaro no later than Friday, May 13, 2011, and she will provide you with instructions for admittance. Ms. Cesaro's e-mail address is *rene.cesaro@nist.gov* and her phone number is (301) 975–2162.

Dated: March 25, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–7756 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA255

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Central Gulf of Alaska, June, 2011

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

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Geological Survey (USGS) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a marine geophysical survey in the central Gulf of Alaska (GOA), June, 2011. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to USGS to incidentally harass, by Level B harassment only, 9 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than May 2, 2011.

ADDRESSES: Comments on the application should be addressed to P. 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 email comments is *ITP.Goldstein@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

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#applications* 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 containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The U.S. Geological Survey (USGS), which is providing funding for the proposed action, has prepared a draft "Environmental Assessment (EA) of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Central Gulf of Alaska, June 2011," prepared by LGL Ltd., Environmental Research Associates (LGL), on behalf of USGS, which is also available at the same internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext. 172.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371(a)(5)(D)) directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. 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 United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA 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 small numbers of marine mammals. Within 45 days of the close of the public 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 January 21, 2011, from USGS for the taking by harassment, of marine mammals, incidental to conducting a marine geophysical survey in the central GOA within the U.S. Exclusive Economic Zone (EEZ) and adjacent international waters in depths from approximately 2,000 meters (m) (6,561.7 feet [ft]) to greater than 6,000 m (19,685 ft). USGS plans to conduct the proposed survey from approximately June 5 to 25, 2011.

USGS plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*) and a seismic airgun array to collect seismic reflection and refraction profiles to be used to delineate the U.S. Extended Continental Shelf (ECS) in the GOA. In addition to the proposed operations of the seismic airgun array, USGS intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a short-term behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities and USGS has requested an authorization to take 9 species of marine mammals by Level B harassment. Take is not expected to result from the use of the MBES or SBP, for reasons discussed in this notice; nor is take expected to result from collision with the vessel because it is a single vessel moving at a relatively slow speed during seismic acquisition within the survey, for a relatively short period of time (approximately 21 days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Specified Activity

USGS's proposed seismic survey in the central GOA is between approximately 200 to 650 kilometers (km) (108 to 351 nautical miles [nmi]) offshore in the area 53 to 57° North, 135 to 148° West (*see* Figure 1 of the IHA application). Water depths in the survey area range from approximately 2,000 m (6,561.7 ft) to greater than 6,000 m (19,685 ft). The project is scheduled to occur from approximately June 5 to 25, 2011. Some minor deviation from these dates is possible, depending on logistics and weather. The proposed seismic survey will collect seismic reflection and refraction profiles to be used to delineate the U.S. ECS in the GOA. The ECS is the region beyond 200 nmi where a nation can show that it satisfies the conditions of Article 76 of the United Nations Convention on the Law of the Sea. One of the conditions in Article 76 is a function of sediment thickness. The seismic profiles are designed to identify the stratigraphic "basement" and to map the thickness of the overlying sediments. Acoustic velocities (required to convert measured travel times to true depth) will be measured directly using sonobuoys and ocean-bottom seismometers (OBSs), as well as by analysis of hydrophone streamer data. Acoustic velocity refers to the velocity of sound through sediments or crust.

The survey will involve one source vessel, the *Langseth.* The *Langseth* will deploy an array of 36 airguns as an energy source. The receiving system will consist of one 8 km (4.3 nmi) long hydrophone streamer and/or five OBSs. As the airgun is towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBSs record the returning acoustic signals internally for later analysis.

The planned seismic survey (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will consist of approximately 2,840 km (1,533.5 nmi) of transect lines in the central GOA survey area (*see* Figure 1 of the IHA application), with an additional 140 km (75.6 nmi) of turns. The array will be powered-down to one 40 in^3 airgun during turns. All of the survey will take place in water deeper than 1,000 m (3,280.8 ft). A multi-channel seismic (MCS) survey using the hydrophone streamer will take place along 17 MCS profile lines and 2 OBS lines. Following the MCS survey, five OBSs will be deployed and a refraction survey will take place along one of the 11 lines. If time permits, an additional 340 km (183.6 nmi) contingency line will be added to the MCS survey. In addition to the operations of the airgun array, a Kongsberg EM 122 MBES and Knudsen 320B SBP will also be operated from the *Langseth* continuously throughout the cruise. There will be additional seismic operations associated with equipment testing, start-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In USGS's calculations, 25% has been added for those additional operations.

All planned geophysical data acquisition activities will be conducted by Lamont-Doherty Earth Observatory (L–DEO), the *Langseth's* operator, with on-board assistance by the scientists who have proposed the study. The Principal Investigators are Drs. Jonathan R. Childs and Ginger Barth of the USGS. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

Vessel Specifications

The *Langseth,* owned by the National Science Foundation, will tow the 36 airgun array, as well as the hydrophone streamer, along predetermined lines. The *Langseth* will also deploy and retrieve the OBSs. When the *Langseth* is towing the airgun array and the hydrophone streamer, the turning rate of the vessel is limited to five degrees per minute. Thus, the maneuverability of the vessel is limited during operations with the streamer.

The vessel has a length of 71.5 m (235 ft); a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834. The *Langseth* was designed as a seismic research vessel with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals emanating from the airgun array. The ship is powered by two 3,550 horsepower (hp) Bergen BRG–6 diesel engines which drive two propellers directly. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800 hp bowthruster, which is not used during seismic acquisition. The *Langseth's* operation speed during seismic acquisition is typically 7.4 to 9.3 km per hour (hr) (km/hr) (4 to 5 knots [kts]). When not towing seismic survey gear, the *Langseth* typically cruises at 18.5 km/hr (10 kts). The *Langseth* has a range of 25,000 km (13,499 nmi) (the distance the vessel can travel without refueling).

The vessel also has an observation tower from which protected species visual observers (PSVO) will watch for marine mammals before and during the proposed airgun operations. When stationed on the observation platform, the PSVO's eye level will be approximately 21.5 m (71 ft) above sea level providing the PSVO an unobstructed view around the entire vessel.

Acoustic Source Specifications

Seismic Airguns

The *Langseth* will deploy a 36 airgun array, with a total volume of approximately 6,600 cubic inches (in^3). The airgun array will consist of a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 in^3, with a firing pressure of 1,900 pounds per square inch. The airguns will be configured as four identical linear arrays or "strings." Each

string will have 10 airguns, the first and last airguns in the strings are spaced 16 m (52 ft) apart. Of the 10 airguns, nine airguns in each string will be fired simultaneously, whereas the tenth is kept in reserve as a spare, to be turned on in case of failure of another airgun. The four airgun strings will be distributed across an area of approximately 24x16 m (78.7x52.5 ft) behind the *Langseth* and will be towed approximately 100 m (328 ft) behind the vessel. The shot interval will be 50 m (164 ft) or approximately 22 seconds (s) for the MCS survey and 150 m (492.1 ft) or approximately 66 s for the OBS refraction survey. The firing pressure of the array is 1,900 pounds per square inch (psi). During firing, a brief (approximately 0.1 s) pulse sound is emitted. The airguns will be silent during the intervening periods. The dominant frequency components range from two to 188 Hertz (Hz).

The tow depth of the array will be 9 m (29.5 ft) during OBS refraction and MCS surveys. Because the actual source is a distributed sound source (36 airguns) rather than a single point source, the highest sound measurable at any location in the water will be less than the nominal source level. In addition, the effective source level for sound propagating in near-horizontal directions will be substantially lower than the nominal source level applicable to downward propagation because of the directional nature of the sound from the airgun array.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa. SPL (in decibels [dB]) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun arrays used by USGS on the *Langseth* are 236 to 265 dB re 1 μPa (p–p) and the rms value for a given airgun pulse is typically 16 dB re 1 μPa lower than the peak-to-peak value. However, the difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors.

Accordingly, L–DEO has predicted the received sound levels in relation to distance and direction from the 36 airgun array and the single Bolt 1900LL 40 in^3 airgun, which will be used during power-downs. A detailed description of L–DEO's modeling for marine seismic source arrays for species mitigation is provided in Appendix A of USGS's application. These are the nominal source levels applicable to downward propagation. The effective source levels for horizontal propagation are lower than those for downward propagation when the source consists of numerous airguns spaced apart from one another.

Appendix B of USGS's EA discusses the characteristics of the airgun pulses and marine mammals. NMFS refers the reviewers to the application and EA documents for additional information.

Predicted Sound Levels for the Airguns

Tolstoy *et al.,* (2009) reported results for propagation measurements of pulses from the *Langseth's* 36 airgun, 6,600 in^3 array in shallow-water (approximately 50 m [164 ft]) and deep-water depths (approximately 1,600 m [5,249 ft]) in the Gulf of Mexico in 2007 and 2008. L–DEO has used these reported empirical values to determine exclusion zones (EZs) for the 36 airgun array and the single airgun; to designate mitigation zones, and to estimate take for marine mammals.

Results of the Gulf of Mexico calibration study (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth. The empirical data for deep water (greater than 1,000 m; 3,280 ft) indicated that the L–DEO model (as applied to the *Langseth's* 36 airgun array) overestimated the received sound levels at a given distance.

Using the corrected measurements (array) or model (single airgun), Table 1 (below) shows the distances at which three rms sound levels are expected to be received from the 36 airgun array and a single airgun. The 180 and 190 dB re 1 μPa (rms) distances are the safety criteria as specified by NMFS (2000) and are applicable to cetaceans and pinnipeds, respectively. If marine mammals are detected within or about to enter the appropriate EZ, the airguns will be powered-down (or shut-down, if necessary) immediately.

Table 1 (below) summarizes the predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the 36 airgun array and a single airgun operating in deep water depths.

TABLE 1—MEASURED (ARRAY) OR PREDICTED (SINGLE AIRGUN) DISTANCES TO WHICH SOUND LEVELS ≥ 190, 180, AND 160 DB RE: 1 μPA (RMS) COULD BE RECEIVED IN WATER DEPTHS >1,000 M DURING THE PROPOSED SURVEY IN THE CENTRAL GOA, JUNE 5 TO 25, 2011.

Source and volume	Water depth	Predicted RMS distances (m)		
		190 dB	180 dB	160 dB
Single Bolt airgun (40 in^3)	Deep > 1,000 m	12	40	385
4 Strings 36 airguns (6,600 in^3)	Deep > 1,000 m	400	940	3,850

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during the survey. The ocean floor will be mapped with the Kongsberg EM 122 MBES and a Knudsen 320B SBP. These sound sources will be operated continuously from the *Langseth* throughout the cruise.

MBES

The *Langseth* will operate a Kongsberg EM 122 MBES concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted MBES emits brief pulses of sound (also called a ping) (10.5 to 13, usually 12 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1° or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

For deep-water operations, each ping consists of eight (in water greater than 1,000 m) or four (less than 1,000 m) successive, fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft. Continuous-wave pulses increase from 2 to 15 milliseconds (ms) long in water depths up to 2,600 m (8,530.2 ft), and FM chirp pulses up to 100 ms long are used in water greater than 2,600 m. The successive transmissions span an overall cross-track angular extent of about 150°, with 2 ms gaps between the pulses for successive sectors.

SBP

The *Langseth* will also operate a Knudsen 320B SBP continuously throughout the cruise simultaneously with the MBES to map and provide information about the sedimentary features and bottom topography. The beam is transmitted as a 27° cone, which is directed downward by a 3.5 kHz transducer in the hull of the *Langseth.* The maximum output is 1,000 watts (204 dB re 1 μPa), but in practice, the output varies with water depth. The pulse interval is one second, but a common mode of operation is to broadcast five pulses at one second intervals followed by a five second pause.

NMFS expects that acoustic stimuli resulting from the proposed operation of the single airgun or the 36 airgun array has the potential to harass marine mammals, incidental to the conduct of the proposed seismic survey. NMFS expects these disturbances to be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. NMFS does not expect that the movement of the *Langseth,* during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4.6 knots [kts]; 8.5 km/hr; 5.3 mph) during seismic acquisition.

Description of the Proposed Dates, Duration, and Specified Geographic Region

The survey will occur in the central GOA, between approximately 200 and 650 km offshore, in the area 53 to 57° North, 135 to 148° West. The seismic survey will take place in water depths of 2,000 to greater than 6,000 m. The exact dates of the activities depend on logistics and weather conditions. The *Langseth* will depart from Dutch Harbor, Alaska on June 5, 2011, and return there on June 25, 2011. Seismic operations will be carried out for an estimated 12 to 14 days.

Description of the Marine Mammals in the Area of the Proposed Specified Activity

Twenty-five marine mammal species (18 cetacean, 6 pinniped, and the sea otter) are known to or could occur in the GOA. Several of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the North Pacific right whale (*Eubalaena japonica*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whales, as well as the Cook Inlet distinct population segment (DPS) of beluga whales (*Dephinapterus leucas*) and the western stock of Steller sea lions (*Eumetopias jubatus*). The eastern stock of Steller sea lions is listed as threatened, as is the southwest Alaska DPS of the sea otter (*Enhydra lutris*).

The marine mammals that occur in the proposed survey area belong to four taxonomic groups: odontocetes (toothed cetaceans, such as dolphins), mysticetes (baleen whales), pinnipeds (seals, sea lions, and walrus), and fissipeds (sea otter). Cetaceans and pinnipeds are the subject of the IHA application to NMFS. Walrus sightings are rare in the GOA. Sea otters generally inhabit nearshore areas inside the 40 m (131.2 ft) depth contour (Riedman and Estes, 1990) and likely would not be encountered in the deep, offshore waters of the study area. The sea otter and Pacific walrus are two marine mammal species mentioned in this document that are managed by the U.S. Fish and Wildlife Service (USFWS) and are not considered further in this analysis; all others are managed by NMFS. Coastal cetacean species (gray whales, beluga whales, and harbor porpoises) and pinniped species (California sea lions and harbor seals) likely would not be encountered in the deep, offshore waters of the survey area.

Table 2 (below) presents information on the abundance, distribution, population status, conservation status, and density of the marine mammals that may occur in the proposed survey area during June, 2011.

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Table 2. The habitat, regional abundance, and conservation status of marine mammals that may occur in or near the proposed seismic survey areas in the central GOA. [See text and Tables 2 to 4 in USGS's application and EA for further details.]

Species	Occurrence in/near Survey Area	Habitat	Abundance (Alaska)	Regional Abundance	ESA[1]	MMPA[2]	Density (#/1,000 km^2) Best[3]	Max[4]
Mysticetes								
North Pacific right whale (Eubalaena japonica)	Rare	Coastal, shelf	28-31[5]	Low hundreds[6]	EN	D	0	0
Gray whale (Eschrichtius robustus)	Uncommon	Coastal	N.A.	19,126[7]	DL	NC D (Western populati	N.A.	N.A.
Humpback whale (Megaptera novaeangliae)	Common	Coastal, banks	3,000 to 5,000[8]	20,800[9]	EN	D	2.15	6.53
Minke whale (Balaenoptera acutorostrata)	Uncommon	Coastal, shelf	1,233[10]	25,000[11]	NL	NC	0	0
Sei whale (Balaenoptera borealis)	Rare	Pelagic	N.A.	7,260 to 12,620[12]	EN	D	0	0
Fin whale (Balaenoptera physalus)	Common	Pelagic	1,652[10]	13,620 to 18,680[13]	EN	D	2.40	5.93
Blue whale (Balaneoptera musculus)	Rare	Pelagic, shelf, coastal	N.A.	3,500[14]	EN	D	0	0
Odontocetes								
Sperm whale (Physeter macrocephalus)	Uncommon	Pelagic	159[15]	24,000[16]	EN	D	0.31	1.69
Cuvier's beaked whale (Ziphius cavirostris)	Common	Pelagic	N.A.	20,000[17]	NL	NC	1.29	1.81
Baird's beaked whale (Berardius bairdii)	Rare	Pelagic	N.A.	6,000[18]	NL	NC	0.40	0.60
Stejneger's beaked whale (Mesoplodon stejnegeri)	Common	Likely pelagic	N.A.	N.A.	NL	NC	0	0
Beluga whale (Delphinapterus leucas)	Extralimital	Coastal and ice edges	340[19]	N.A.	EN[34] NL	D[34] NC	N.A.	N.A.

Species	Occurrence in/near Survey Area	Habitat	Abundance (Alaska)	Regional Abundance	ESA[1]	MMPA[2]	Density (#/1,000 km^2) Best[3]	Max[4]
Pacific white-sided dolphin (Lagenorhynchus obliquidens)	Common	Pelagic, shelf, coastal	26,880[20]	988,000[21]	NL	NC	N.A.	N.A.
Risso's dolphin (Grampus griseus)	Extralimital	Pelagic, shelf, coastal	N.A.	838,000[22]	NL	NC	N.A.	N.A.
Killer whale (Orcinus orca)	Common	Pelagic, shelf, coastal	2,636[23]	8,500[24]	NL[35]	NC	3.13	7.73
Short-finned pilot whale (Globicephala macrorhynchus)	Extralimital	Pelagic, shelf, coastal	N.A.	53,000[22]	NL	NC	N.A.	N.A.
Harbor porpoise (Phocoena phocoena)	Uncommon	Coastal	11,146[25] 31,046[26]	168,387[27]	NL	NC	N.A.	N.A.
Dall's porpoise (Phocoenoides dalli)	Common	Pelagic, shelf	83,400[20]	1,186,000[28]	NL	NC	19.97	62.50
Pinnipeds								
Northern fur seal (Callorhinus ursinus)	Uncommon	Pelagic, breeds coastally	653,171[7]	1.1 million[29]	NL	D	105.90	158.85
Steller sea lion (Eumetopias jubatus)	Common	Coastal, offshore	58,334-72,223[30] 42,366[31]	N.A.	T[36] EN[36]	D	9.80	14.70
California sea lion (Zalophus c. californianus)	Uncommon	Coastal	N.A.	238,000[33]	NL	NC	N.A.	N.A.
Harbor seal (Phoca vitulina richardsi)	Uncommon	Coastal	45,975[26]	180,017[32]	NL	NC	N.A.	N.A.
Northern elephant seal (Mirounga angustirostris)	Uncommon	Coastal, offshore	N.A.	124,000[33]	NL	NC	0	0

N.A. Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, NC = Not Classified.
[3] Best density estimate as listed in Table 3 of the application.[4] Maximum density estimate as listed in Table 3 of the application.
[5] Bering Sea and Aleutian Islands (Wade et al., 2010).
[6] Western population (Brownell et al., 2001)
[7] Eastern North Pacific (Allen and Angliss, 2010).
[8] GOA (Calambokidis et al., 2008).
[9] North Pacific Ocean (Barlow et al., 2009).
[10] Western GOA and eastern Aleutians (Zerbini et al., 2006).
[11] Northwest Pacific (Buckland et al., 1992; IWC, 2009).
[12] North Pacific (Tillman, 1977).
[13] North Pacific (Ohsumi and Wada, 1974).
[14] Eastern North Pacific (NMFS, 1998).
[15] Western GOA and eastern Aleutians (Zerbini et al., 2004).
[16] Eastern temperate North Pacific (Whitehead, 2002b).
[17] Eastern Tropical Pacific (Wade and Gerrodette, 1993).
[18] Western North Pacific (Reeves and Leatherwood, 1994; Kasuya, 2002).
[19] Cook Inlet stock (Shelden et al, 2010)

[20] Alaska stock (Allen and Angliss, 2010).
[21] North Pacific Ocean (Miyashita, 1993b).
[22] Western North Pacific Ocean (Miyashita, 1993a).
[23] Minimum abundance in Alaska, includes 2,084 resident and 552 GOA, Bering Sea, Aleutian Islands transients (Allen and Angliss, 2010).
[24] Eastern Tropical Pacific (Ford, 2002).
[25] Southeast Alaska stock (Allen and Angliss, 2010).
[26] GOA stock (Allen and Angliss, 2010).
[27] Eastern North Pacific (totals from Carretta et al., 2009 and Allen and Angliss, 2010).
[28] North Pacific Ocean and Bering Sea (Houck and Jefferson, 1999).
[29] North Pacific (Gelatt and Lowry, 2008).
[30] Eastern U.S. Stock (Allen and Angliss, 2010).
[31] Western U.S. Stock (Allen and Angliss, 2010).
[32] Alaska statewide (Allen and Angliss, 2010).
[33] Caretta et al., 2009.
[34] Cook Inlet DPS is listed as Endangered and Depleted; other stocks are not listed.
[35] Stocks in Alaska are not listed, but the southern resident DPS is listed as endangered. AT1 transient in Alaska is considered depleted and a strategic stock (NOAA, 2004a).
[36] Eastern stock is listed as threatened, and the western stock is listed as endangered.

Refer to Section III of USGS's application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these species and their occurrence in the proposed project area. The application also presents how USGS calculated the estimated densities for the marine mammals in the proposed survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the proposed IHA.

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007).

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

Tolerance to Sound

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defines tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or man-made noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Malme *et al.,* (1985) studied the responses of humpback whales on their summer feeding grounds in southeast Alaska to seismic pulses from a airgun with a total volume of 100 in^3. They noted that the whales did not exhibit persistent avoidance when exposed to the airgun and concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 μPa.

Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. She recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (i.e., active versus silent).

Masking of Natural Sounds

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (e.g., Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (e.g., Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to

pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses. Refer to Appendix B (4) of USGS's EA for a more detailed discussion of masking effects on marine mammals.

Behavioral Disturbance

Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead (*Balaena mysticetus*), and sperm whales. Less detailed data are available for some other species of baleen whales, small toothed whales, and sea otters, but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kms, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B (5) of USGS's EA, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson, *et al.,* 1995). They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re 1 μPa (rms) seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from four to 15 km from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B (5) of USGS's EA have shown that some species of baleen whales, notably bowhead and humpback whales, at times, show strong avoidance at received levels lower than 160 to 170 dB re 1 μPa (rms).

McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16 airgun array (2,678 in^3) and to a single airgun (20 in^3) with source level of 227 dB re 1 μPa (p–p). In the 1998 study, they documented that avoidance reactions began at five to eight km from the array, and that those reactions kept most pods approximately three to four km from the operating seismic boat. In the 2000 study, they noted localized displacement during migration of four to five km by traveling pods and seven to 12 km by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re 1 μPa for humpback pods containing females, and at the mean closest point of approach distance the received level was 143 dB re 1 μPa. The initial avoidance response generally occurred at distances of five to eight km from the airgun array and two km from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re 1 μPa.

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100 in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed "startled" at received levels of 150 to 169 dB re 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 μPa (rms).

Studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was no observable direct correlation between strandings and seismic surveys (IWC, 2007:236).

There are no data on reactions of right whales to seismic surveys, but results from the closely-related bowhead whale show that their responsiveness can be quite variable depending on their activity (migrating versus feeding). Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20 to 30 km from a medium-sized airgun source at received sound levels of around 120 to 130 dB re 1 μPa (Miller *et al.,* 1999; Richardson *et al.,* 1999; *see* Appendix B (5) of USGS's EA). However, more recent research on bowhead whales (Miller *et al.,* 2005; Harris *et al.,* 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as

sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing-respiration-dive cycles were evident upon statistical analysis (Richardson *et al.,* 1986). In the summer, bowheads typically begin to show avoidance reactions at received levels of about 152 to 178 dB re 1 μPa (Richardson *et al.,* 1986, 1995; Ljungblad *et al.,* 1988; Miller *et al.,* 2005).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a, b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (e.g., McDonald *et al.,* 1995; Dunn and Hernandez, 2009). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). In a study off of Nova Scotia, Moulton and Miller (2005) found little difference in sighting rates (after accounting for water depth) and initial sighting distances of balaenopterid whales when airguns were operating vs. silent. However, there were indications that these whales were more likely to be moving away when seen during airgun operations. Similarly, ship-based monitoring studies of blue, fin, sei and minke whales offshore of Newfoundland (Orphan Basin and Laurentian Sub-basin) found no more than small differences in sighting rates and swim directions during seismic versus non-seismic periods (Moulton *et al.,* 2005, 2006a,b).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2010).

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above and (in more detail) in Appendix B of USGS's EA have been reported for toothed whales. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009).

Seismic operators and marine mammal observers on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; *see also* Barkaszi *et al.,* 2009). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Stone and Tasker, 2006; Weir, 2008). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km less, and some individuals show no apparent avoidance. The beluga whale (*Delphinapterus leucas*) is a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys conducted in the southeastern Beaufort Sea during summer found that sighting rates of beluga whales were significantly lower at distances 10 to 20 km compared with 20 to 30 km from an operating airgun array, and observers on seismic boats in that area rarely see belugas (Miller *et al.,* 2005; Harris *et al.,* 2007).

Captive bottlenose dolphins (*Tursiops truncatus*) and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases

the whales do not show strong avoidance, and they continue to call (*see* Appendix B of USGS's EA for review). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly.

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; *see also* the Stranding and Mortality section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (Appendix B of USGS's EA).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun array. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior, *see* Appendix B of USGS's EA. In the Beaufort Sea, some ringed seals avoided an area of 100 m to (at most) a few hundred meters around seismic vessels, but many seals remained within 100 to 200 m (328 to 656 ft) of the trackline as the operating airgun array passed by (e.g., Harris *et al.,* 2001; Moulton and Lawson, 2002; Miller *et al.,* 2005). Ringed seal sightings averaged somewhat farther away from the seismic vessel when the airguns were operating than when they were not, but the difference was small (Moulton and Lawson, 2002). Similarly, in Puget Sound, sighting distances for harbor seals and California sea lions tended to be larger when airguns were operating (Calambokidis and Osmek, 1998). Previous telemetry work suggests that avoidance and other behavioral reactions may be stronger than evident to date from visual studies (Thompson *et al.,* 1998).

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.,* 2007).

Researchers have studied TTS in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, i.e., permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Table 1 (above) presents the distances from the *Langseth's* airguns at which the received energy level (per pulse, flat-weighted) would be expected to be greater than or equal to 180 dB re 1 μPa (rms).

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 μPa (rms). NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 μPa (rms). The 180 dB level is a shutdown criterion applicable to cetaceans, as specified by NMFS (2000); these levels were used to establish the EZs. NMFS also assumes that cetaceans exposed to levels exceeding 160 dB re 1 μPa (rms) may experience Level B harassment.

Researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

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 assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. 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 (Southall *et al.,* 2007). For this proposed study, USGS expects no cases of TTS given: (1) The low abundance of baleen whales in the planned study area at the time of the survey; and (2) the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for TTS to occur.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from more prolonged (non-pulse) exposures suggested that some pinnipeds (harbor seals in particular) incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.,* 1999, 2005; Ketten *et al.,* 2001). The TTS threshold for pulsed sounds has been indirectly estimated as being an SEL of approximately 171 dB re 1 $\mu Pa^2 \cdot s$ (Southall *et al.,* 2007) which would be equivalent to a single pulse with received level approximately 181 to 186 dB re 1 μPa (rms), or a series of pulses for which the highest rms values are a few dB lower. Corresponding values for California sea lions and northern elephant seals are likely to be higher (Kastak *et al.,* 2005).

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (e.g., Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

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. PTS might occur at a received sound level at least several dBs above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time—*see* Appendix B(6) of USGS's EA. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than six dB (Southall *et al.,* 2007).

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Stranding and Mortality—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used for marine waters for commercial seismic surveys or (with rare exceptions) for seismic research; they have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar and, in one case, an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong "pulsed" sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (e.g., Hildebrand, 2005; Southall *et al.,* 2007). Appendix B (6) of USGS's EA provides additional details.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues. Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are indications that gas-bubble disease (analogous to "the bends"), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. However, the evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of two to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (e.g., Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity "pulsed" sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, there was a stranding of two Cuvier's beaked whales (*Ziphius cavirostris*) in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* was operating a 20 airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas

occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels, and

(2) Differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales and some odontocetes, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

MBES

USGS will operate the Kongsberg EM 122 MBES from the source vessel during the planned study. Sounds from the MBES are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this MBES is at frequencies near 12 kHz, and the maximum source level is 242 dB re 1 μPa (rms). The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (in water less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2 to 15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an MBES emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the MBES. The area of possible influence of the MBES is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During USGS's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of an MBES on marine mammals are outlined below.

Masking—Marine mammal communications will not be masked appreciably by the MBES signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the MBES signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (*Globicephala melas*) (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz "whale-finding" sonar with a source level of 215 dB re 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz acoustic Doppler current profiler were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 s tonal signals at frequencies similar to those that will be emitted by the MBES used by USGS, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an MBES.

Very few data are available on the reactions of pinnipeds to echosounder sounds at frequencies similar to those used during seismic operations. Hastie and Janik (2007) conducted a series of behavioral response tests on two captive gray seals to determine their reactions to underwater operation of a 375 kHz multibeam imaging echosounder that included significant signal components down to 6 kHz. Results indicated that the two seals reacted to the signal by significantly increasing their dive durations. Because of the likely brevity of exposure to the MBES sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the animals.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (*see* above). However, the MBES proposed for use by USGS is quite different than sonar used for Navy operations. Pulse duration of the MBES is very short relative to the naval sonar.

Also, at any given location, an individual marine mammal would be in the beam of the MBES for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; Navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the MBES rather drastically relative to that from naval sonar.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES is not likely to result in the harassment of marine mammals.

SBP

USGS will also operate an SBP from the source vessel during the proposed survey. Sounds from the SBP are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the SBP is at 3.5 kHz, and the beam is directed downward. The SBP on the *Langseth* has a maximum source level of 204 dB re 1 μPa.

Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for an SBP more powerful than that on the *Langseth*—if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Masking—Marine mammal communications will not be masked appreciably by the SBP signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the SBP signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the SBP are considerably weaker than those from the MBES. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP.

Acoustic Release Signals

The acoustic release transponder used to communicate with the OBSs uses frequencies 9 to 13 kHz. These signals will be used very intermittently. It is unlikely that the acoustic release signals would have a significant effect on marine mammals through masking, disturbance, or hearing impairment. Any effects likely would be negligible given the brief exposure at presumably low levels.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (*see* the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections) which, as noted are designed to effect the least practicable adverse impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (i.e., fish and invertebrates), and there will be no physical damage to any habitat. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited (*see* Appendix D of USGS's EA). There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (*see* Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (*see* Appendix D USGS's EA). For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation,

reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as USGS and NMFS know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns [less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)] likely did not propagate to the fish because the water in the study areas was very shallow (approximately nine m in the former case and less than two m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the "cutoff frequency") at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000 a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus (*see* Appendix D of USGS's EA).

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the "catchability" of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Lokkeborg, 1991; Skalski *et al.,* 1992; Engas *et al.,* 1996). In other airgun experiments, there was no change in catch per unit effort (CPUE) of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.,* 1994; La Bella *et al.,* 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish, e.g., a change in vertical or horizontal distribution, as reported in Slotte *et al.* (2004).

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001; *see also* Appendix E of USGS's EA).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix E of USGS's EA.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000 a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (e.g., squid in McCauley *et al.,* 2000 a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.,* 2003, 2004; DFO 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) 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 the availability of such species or stock for taking for certain subsistence uses.

USGS has based the mitigation measures described herein, to be implemented for the proposed seismic survey, on the following:

(1) Protocols used during previous USGS and L–DEO seismic research cruises as approved by NMFS;

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, USGS and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones;

(2) Power-down procedures;

(3) Shut-down procedures;

(4) Ramp-up procedures; and

(5) Special procedures for situations and species of concern.

Planning Phase—In designing the proposed seismic survey, USGS has considered potential environmental impacts including seasonal, biological, and weather factors; ship schedules; and equipment availability. Part of the considerations was whether the research objectives could be met with a smaller source; tests will be conducted to determine whether the two-string sub-array (3,300 in^3) will be satisfactory to accomplish the geophysical objectives. If so, the smaller array will be used to minimize environmental impact. Also, the array will be powered-down to a single airgun during turns, and the array will be shut-down during OBS deployment and retrieval.

Proposed Exclusion Zones—Received sound levels have been determined by empirical corrected measurements for the 36 airgun array, and an L–DEO model was used to predict the EZs for the single 1,900LL 40 in^3 airgun, which will be used during power-downs. Results were recently reported for propagation measurements of pulses from the 36 airgun array in two water depths (approximately 1,600 m and 50 m [5,249 to 164 ft]) in the Gulf of Mexico in 2007 to 2008 (Tolstoy *et al.,* 2009). It would be prudent to use the empirical values that resulted to determine EZs for the airgun array. Results of the propagation measurements (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth. During the proposed study, all survey effort will take place in deep (greater than 1,000 m) water, so propagation in shallow water is not relevant here. The depth of the array was different in the Gulf of Mexico calibration study (6 m [19.7 ft]) than in the proposed survey (9 m); thus, correction factors have been applied to the distances reported by Tolstoy *et al.*

(2009). The correction factors used were the ratios of the 160, 180, and 190 dB distances from the modeled results for the 6,600 in^3 airgun array towed at 6 m versus 9 m. Based on the propagation measurements and modeling, the distances from the source where sound levels are predicted to be 190, 180, and 160 dB re 1 μPa (rms) were determined (*see* Table 1 above). The 180 and 190 dB radii are to 940 m and 400 m, respectively, as specified by NMFS (2000); these levels were used to establish the EZs. If the PSVO detects marine mammal(s) within or about to enter the appropriate EZ, the airguns will be powered-down (or shut-down, if necessary) immediately.

Power-Down Procedures—A power-down involves decreasing the number of airguns in use such that the radius of the 180 dB (or 190 dB) zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, USGS will operate one airgun. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut-down occurs when the *Langseth* suspends all airgun activity.

If the PSVO detects a marine mammal outside the EZ, but it is likely to enter the EZ, USGS will power-down the airguns before the animal is within the EZ. Likewise, if a mammal is already within the EZ, when first detected USGS will power-down the airguns immediately. During a power-down of the airgun array, USGS will also operate the 40 in^3 airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), USGS will shut-down the airgun (*see* next section).

Following a power-down, USGS will not resume airgun activity until the marine mammal has cleared the EZ. L–DEO will consider the animal to have cleared the EZ if:

- A PSVO has visually observed the animal leave the EZ, or
- A PSVO has not sighted the animal within the EZ for 15 min for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 min for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

During airgun operations following a power-down (or shut-down) whose duration has exceeded the time limits specified previously, USGS will ramp-up the airgun array gradually (*see* Shut-down and Ramp-up Procedures).

Shut-down Procedures—USGS will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. USGS will implement a shut-down:

(1) If an animal enters the EZ of the single airgun after USGS has initiated a power-down; or

(2) If an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

USGS will not resume airgun activity until the marine mammal has cleared the EZ, or until the PSVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding section.

Ramp-up Procedures—USGS will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a power-down has exceeded that period. USGS proposes that, for the present cruise, this period would be approximately eight min. This period is based on the 180 dB radius (940 m) for the 36 airgun array towed at a depth of 9 m in relation to the minimum planned speed of the *Langseth* while shooting (7.4 km/hr). USGS and L–DEO have used similar periods (approximately 8 to 10 min) during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding six dB per five min period over a total duration of approximately 35 min. During ramp-up, the PSOs will monitor the EZ, and if marine mammals are sighted, USGS will implement a power-down or shut-down as though the full airgun array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, USGS will not commence the ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the safety zone for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. USGS will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or close to the vessel at night.

Special Procedures for Situations and Species of Concern—USGS will implement special mitigation procedures as follows:

- The airguns will be shut-down immediately if ESA-listed species for which no takes are being requested (i.e., North Pacific right, sei, blue, and beluga whales) are sighted at any distance from the vessel. Ramp-up will only begin if the whale has not been seen for 30 min.
- Concentrations of humpback, fin, and/or killer whales will be avoided if possible, and the array will be powered-down if necessary. For purposes of this proposed survey, a concentration or group of whales will consist of three or more individuals visually sighted and do not appear to be traveling (e.g., feeding, socializing, etc.).

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on NMFS's evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts 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 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 IHAs must

include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Monitoring

USGS proposes to sponsor marine mammal monitoring during the proposed project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. USGS's proposed Monitoring Plan is described below this section. USGS understands that this monitoring plan will be subject to review by NMFS, and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. USGS is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

PSVOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the start of airgun operations after an extended shut-down. PSVOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the airguns will be powered-down or shut-down when marine mammals are observed within or about to enter a designated EZ. The EZ is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the central GOA, at least four PSOs will be based aboard the *Langseth.* USGS will appoint the PSOs with NMFS' concurrence. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, two PSVOs will be on duty from the observation tower to monitor marine mammals near the seismic vessel. Use of two simultaneous PSVOs will increase the effectiveness of detecting animals near the source vessel. However, during meal times and bathroom breaks, it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on duty. PSVO(s) will be on duty in shifts of duration no longer than 4 hr.

Two PSVOs will also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third PSO will monitor the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSO on PAM. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the PSVO will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (e.g., 7 × 50 Fujinon), Big-eye binoculars (25 × 150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

When marine mammals are detected within or about to enter the designated EZ, the airguns will immediately be powered-down or shut-down if necessary. The PSO(s) will continue to maintain watch to determine when the animal(s) are outside the EZ by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the EZ, or if not observed after 15 min for species with shorter dive durations (small odontocetes and pinnipeds) or 30 min for species with longer dive durations (mysticetes and large odontocetes, including sperm, killer, and beaked whales).

Passive Acoustic Monitoring (PAM)

PAM will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range.

Besides the three PSVOs, an additional Protected Species Acoustic Observer (PSAO) with primary responsibility for PAM will also be aboard the vessel. USGS can use acoustic monitoring in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It will be monitored in real time so that the PSVOs can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (i.e., hydrophones) and software. The "wet end" of the system consists of a towed hydrophone array that is connected to the vessel by a cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer laboratory where the acoustic station and signal conditioning and processing system will be located. The digitized signal and PAM system is monitored by PSOs at a station in the main laboratory. The lead in from the hydrophone array is approximately 400 m (1,312 ft) long, the active section of the array is approximately 56 m (184 ft) long, and the hydrophone array is typically towed at depths of less than 20 m (66 ft).

Ideally, the PSAO will monitor the towed hydrophones 24 hr per day at the seismic survey area during airgun operations, and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary PAM streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone. Every effort would be made to have a working PAM system during the cruise. In the unlikely event that all three of these systems were to fail, USGS would continue science acquisition with the visual-based observer program. The PAM

system is a supplementary enhancement to the visual monitoring program. If weather conditions were to prevent the use of PAM then conditions would also likely prevent the use of the airgun array.

One PSAO will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. PSAOs monitoring the acoustical data will be on shift for one to six hours at a time. Besides the PSVO, an additional PSAO with primary responsibility for PAM will also be aboard the source vessel. All PSVOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the PSAO will contact the PSVO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to allow a power-down or shut-down to be initiated, if required. The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

PSVO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the airguns when a marine mammal is within or near the EZ. Observations will also be made during daytime periods when the *Langseth* is underway without seismic operations. In addition to transits to, from, and through the study area, there will also be opportunities to collect baseline biological data during the deployment and recovery of OBSs.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and power-downs or shut-downs will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power-down or shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

USGS will submit a report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in "takes" of marine mammals by harassment or in other ways.

USGS will report all injured or dead marine mammals (regardless of cause) to NMFS as soon as practicable. The report should include the species or description of the animal, the condition of the animal, location, time first found, observed behaviors (if alive) and photo or video, if available. In the unanticipated event that any taking of a marine mammal in a manner prohibited by the proposed IHA occurs, such as an injury, serious injury, or mortality, and are judged to result from the proposed activities, the operator will immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS. The operator will postpone the proposed activities until NMFS is able to review the circumstances of the take. NMFS will work with the operator to determine whether modifications in the activities are appropriate and necessary, and notify the operator that they may resume sound source operations.

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 harassment is anticipated and authorized as a result of the proposed marine geophysical survey in the central GOA. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 dB or cause temporary, short-term changes in behavior. There is no evidence that the planned activities could result in injury, serious injury, or mortality within the specified geographic area for which USGS seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe USGS's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected

during the proposed seismic program. The estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the 36 airgun array to be used during approximately 3,300 km (1,782 nmi) of survey lines in the central GOA.

USGS assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES and SBP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES and SBP given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute "taking" (NMFS, 2001). Therefore, USGS provides no additional allowance for animals that could be affected by sound sources other than airguns.

There are several sources of systematic data on the numbers and distributions of marine mammals in the coastal and nearshore areas of the GOA, but there are fewer data for offshore areas. Vessel-based surveys in the northern and western GOA from the Kenai Peninsula to the central Aleutian Islands during July to August, 2001 to 2001 (Zerbini *et al.,* 2003, 2006, 2007) and in the northern and western GOA from Prince William Sound to approximately 160° West off the Alaska Peninsula during June 26 to July 15, 2003 (Waite, 2003) were confined to waters less than 1,000 m deep, and most effort was in depths less than 100 m. Similarly, Dahlheim *et al.* (2000) conducted aerial surveys of the nearshore waters from Bristol Bay to Dixon Entrance for harbor porpoises during 1993, and Dahlheim and Towell (1994) conducted vessel-based surveys of Pacific white-sided dolphins in the inland waterways of southeast Alaska during April to May, June or July, and September to early October of 1991 to 1993.

Deeper water was included in several surveys. In a report on a seismic cruise in southeast Alaska from Dixon Entrance to Kodiak Island during August to September, 2004, MacLean and Koski (2005) included density estimates of cetaceans and pinnipeds for each of three depth ranges (less than 100 m, 100 to 1,000 m, and greater than 1,000 m) during non-seismic periods. Hauser and Holst (2009) reported density estimates during non-seismic periods for all marine mammals sighted during a September to early October seismic cruise in southeast Alaska for each of the same three depth ranges as MacLean and Koski (2005). Rone *et al.* (2010) conducted surveys of nearshore and offshore strata in the GOA during April, 2009, with much of their survey effort in water depths greater than 1,000 m. The Department of the Navy (DON) (2009) estimated densities of several species of marine mammals in the offshore GOA based on surveys by other researchers.

Table 2 (Table 3 of the IHA application) gives the estimated average (best) and maximum densities of marine mammals expected to occur in the deep, offshore waters of the proposed survey area. USGS used the densities reported by MacLean and Koski (2005) and Hauser and Holst (2009) for greater than 1,000 m, which were corrected for both detectability and availability biases. USGS calculated density estimates from effort and sightings in water depths greater than 1,000 m in Rone *et al.* (2010) for humpback, fin, and killer whales and Dall's porpoise, and in 500 to 1,000 m depths of Waite (2003) for Cuvier's and Baird's beaked whales, using values for $f(0)$ and $g(0)$ from Barlow and Forney (2007). Finally, USGS used seasonal densities for pinnipeds from DON (2009), which were based on counts at haul-out sites and biological (mostly breeding) information to estimate in-water densities.

There is some uncertainty about the representativeness of the data and the assumptions used in the calculations below for two main reasons: (1) The surveys from which densities were derived were at different times of year: April (Rone *et al.,* 2010), June to July (Waite, 2003), August to September (MacLean and Koski, 2005), and September to October (Hauser and Holst, 2009); and (2) the MacLean and Koski (2005) and Hauser and Holst (2009) surveys were conducted primarily in southeast Alaska (east of the proposed study area). However, the approach used here is believed to be the best available approach.

Also, to provide some allowance for these uncertainties, "maximum estimates" as well as "best estimates" of the densities present and numbers potentially affected have been derived. Best estimates of cetacean density are effort-weighted mean densities from the various surveys, whereas maximum estimates of density come from the individual survey that provided the highest density. For marine mammals where only one density estimate was available, the maximum is 1.5× the best estimate.

For one species, the Dall's porpoise, density estimates in the original reports are much higher than densities expected during the proposed survey, because this porpoise is attracted to vessels. USGS estimates for Dall's porpoises are from vessel-based surveys without seismic activity; they are overestimates possibly by a factor of 5x, given the tendency of this species to approach vessels (Turnock and Quinn, 1991). Noise from the airgun array during the proposed survey is expected to at least reduce and possibly eliminate the tendency of this porpoise to approach the vessel. Dall's porpoises are tolerant of small airgun sources (MacLean and Koski, 2005) and tolerated higher sound levels than other species during a large-array survey (Bain and Williams, 2006); however, they did respond to that and another large airgun array by moving away (Calambokidis and Osmek, 1998; Bain and Williams, 2006). Because of the probable overestimates, the best and maximum estimates for Dall's porpoises shown in Table 2 (Table 3 of the IHA application) are one-quarter of the reported densities. In fact, actual densities are probably slightly lower than that.

USGS's estimates of exposures to various sound levels assume that the proposed surveys will be fully completed including the contingency line; in fact, the ensonified areas calculated using the planned number of line-km have been increased by 25% to accommodate lines that may need to be repeated, equipment testing, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated EZs will result in the power-down or shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to sound levels of 160 dB re 1 μPa (rms) are precautionary and probably overestimate the actual numbers of marine mammals that might be involved. These estimates also assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

USGS estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) on one or more occasions by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion and the expected

density of marine mammals. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, including areas of overlap. In the proposed survey, the seismic lines are widely spaced in the survey area, so few individual marine mammals would be exposed more than once during the survey. The area including overlap is only 1.13 times the area excluding overlap. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey. The number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 μPa was calculated by multiplying:

(1) The expected species density, either "mean" (i.e., best estimate) or "maximum", times

(2) the anticipated area to be ensonified to that level during airgun operations excluding overlap.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by "drawing" the applicable 160 dB buffer (*see* Table 1 of the IHA application) around each seismic line, and then calculating the total area within the buffers. Areas of overlap (because of lines being closer together than the 160 dB radius) were limited and included only once when estimating the number of individuals exposed. Before calculating numbers of individuals exposed, the areas were increased by 25% as a precautionary measure.

Table 2 (Table 4 of the IHA application) shows the best and maximum estimates of the number of different individual marine mammals that potentially could be exposed to greater than or equal to 160 dB re 1 μPa (rms) during the seismic survey if no animals moved away from the survey vessel. The requested take authorization, given in Table 3 (the far right column of Table 4 of the IHA application), is based on the maximum estimates rather than the best estimates of the numbers of individuals exposed, because of uncertainties about the representativeness of the density data discussed previously.

Applying the approach described above, approximately 20,933 km² (6,103.1 nmi²) (approximately 26,166 km² [7,628.8 nmi²] including the 25% contingency) would be within the 160 dB isopleths on one or more occasions during the survey, assuming that the contingency line is completed. Because this approach does not allow for turnover in the marine mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels.

The "best estimate" of the number of individual cetaceans that could be exposed to seismic sounds with greater than or equal to 160 dB re 1 μPa (rms) during the proposed survey is 776 (*see* Table 4 of the IHA application). That total includes 56 humpback, 63 fin, 8 sperm, 34 Cuvier's beaked, 11 Baird's beaked, and 82 killer whales, which would represent 0.3%, 0.4%, less than 0.1%, 0.2%, 0.2%, and 1% of the regional populations, respectively. Dall's porpoises are expected to be the most common species in the study area; the best estimate of the number of Dall's porpoises that could be exposed is 522 or less than 0.1% of the regional population. This may be a slight overestimate because the estimated densities are slight overestimates. Estimates for other species are lower. The "maximum estimates" total 1,882 cetaceans. "Best estimates" of 256 Steller sea lions and 2,771 northern fur seals could be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms). These estimates represent 0.6% of the Steller sea lion regional population and less than 0.1% of the northern fur seal regional population. The estimated numbers of pinnipeds that could be exposed to received levels greater than or equal to 160 dB re 1 μPa (rms) are probably overestimates of the actual numbers that will be affected. During the June survey period, the Steller sea lion is in its breeding season, with males staying on land and females with pups generally staying close to the rookeries in shallow water. Male northern fur seals are at their rookeries in June, and adult females are either there or migrating there, possibly through the survey area. No take has been requested for North Pacific right, minke, sei, and blue whales, Stejneger's beaked whales, beluga whales, Pacific white-sided and Risso's dolphins, short-finned pilot whales, harbor porpoises, Northern elephant and harbor seals, and California sea lions.

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS ≥160 DB DURING USGS'S PROPOSED SEISMIC SURVEY IN THE CENTRAL GOA DURING JUNE 2011.

Species	Estimated number of individuals exposed to sound levels ≥160 dB re 1 μPa (Best [1])	Estimated number of individuals exposed to sound levels ≥160 dB re 1 μPa (Maximum [1])	Requested take authorization	Approximate percent of regional population [2] (Best)
Balaenopteridae:				
North Pacific right whale	0	0	0	0
Gray whale	NA	NA	NA	NA
Humpback whale	56	171	171	0.3
Minke whale	0	0	0	0
Sei whale	0	0	0	0
Fin whale	63	155	155	0.4
Blue whale	0	0	0	0
Physeteridae:				
Sperm whale	8	35	35	<0.1
Ziphidae:				
Cuvier's beaked whale	34	38	38	0.2
Baird's beaked whale	11	13	13	0.2
Stejneger's beaked whale	0	0	0	0
Delphinidae:				
Beluga whale	NA	NA	NA	NA

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS ≥160 dB DURING USGS'S PROPOSED SEISMIC SURVEY IN THE CENTRAL GOA DURING JUNE 2011.—Continued

Species	Estimated number of individuals exposed to sound levels ≥160 dB re 1 μPa (Best [1])	Estimated number of individuals exposed to sound levels ≥160 dB re 1 μPa (Maximum [1])	Requested take authorization	Approximate percent of regional population [2] (Best)
Pacific white-sided dolphin	NA	NA	NA	NA
Risso's dolphin	NA	NA	NA	NA
Killer whale	82	162	162	1.0
Short-finned pilot whale	NA	NA	NA	NA
Phocoenidae:				
Harbor porpoise	NA	NA	NA	NA
Dall's porpoise	522	1,308	1,308	<0.1
Pinnipeds:				
Northern fur seal	2,771	3,325	3,325	<0.1
Steller sea lion	256	308	308	0.6
California sea lion	NA	NA	NA	NA
Harbor seal	NA	NA	NA	NA
Northern elephant seal	0	0	0	0

[1] Best and maximum estimates are based on densities from Table 3 and ensonified areas (including 25% contingency) of 26,166.25 km^2 for 160 dB.
[2] Regional population size estimates are from Table 2 (*see* Table 2 of the IHA application); NA means not available.

Encouraging and Coordinating Research

USGS will coordinate the planned marine mammal monitoring program associated with the seismic survey in the central GOA with other parties that may have interest in the area and/or be conducting marine mammal studies in the same region during the proposed seismic survey. USGS will coordinate with applicable U.S. agencies (e.g., NMFS), and will comply with their requirements.

Negligible Impact and Small Numbers Analysis and 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."

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, on behalf of the Secretary, preliminarily finds that USGS's activities would result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the marine seismic survey in the central GOA would have a negligible impact on the affected species or stocks of marine mammals.

For reasons stated previously in this document, the specified activities associated with the marine seismic survey are not likely to cause TTS, PTS, or other non-auditory injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be minimized through the incorporation of the monitoring and mitigation measures.

In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) the number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) the context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) the status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) impacts on habitat affecting rates of recruitment/survival; and

(6) the effectiveness of monitoring and mitigation measures.

As mentioned previously, NMFS estimates that nine species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, one percent or less) relative to the population size.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the USGS's planned marine seismic survey, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities. No mortality or injury is expected to occur, and due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine geophysical survey in the central GOA, June, 2011, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short and sporadic duration of the research activities, have led NMFS to preliminary determine that this action will have a negligible impact on the species in the specified geographic region.

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 USGS's planned research activities, will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine seismic survey

will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (deep, offshore waters of the central GOA) that implicate MMPA Section 101(a)(5)(D).

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the ESA, including the North Pacific right, humpback, sei, fin, blue, and sperm whales, as well as the Cook Inlet DPS of beluga whales and the western stock of Steller sea lions. The eastern stock of Steller sea lions is listed as threatened, as is the southwest Alaska DPS of the sea otter. Under Section 7 of the ESA, USGS has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. NMFS's Office of Protected Resources, Permits, Conservation and Education Division, has initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, USGS, in addition to the mitigation and monitoring requirements included in the IHA, will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS's Biological Opinion issued to both USGS and NMFS's Office of Protected Resources.

National Environmental Policy Act (NEPA)

With its complete application, USGS provided NMFS an EA analyzing the direct, indirect, and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL on behalf of USGS is entitled "Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the central Gulf of Alaska, June 2011." Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the USGS EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the USGS EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Proposed Authorization

NMFS proposes to issue an IHA to USGS for conducting a marine geophysical survey in the central GOA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (*see* **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 25, 2011.

James H. Lecky,

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

[FR Doc. 2011–7487 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: 5/2/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Towel, Highly Absorbent, Synthetic "Shammy"

NSN: 7920–01–215–6568—15x15.
NSN: 7920–01–215–6569—20x23.
NPA: Industries for the Blind, Inc., West

Allis, WI.
Contracting Activity: General Services Administration, Forth Worth, TX.
Coverage: A–List for the Total Government Requirement as aggregated by the General Services Administration.

Shirt, Winter Dress, USCG, Unisex, Long Sleeve, Blue

NSN: PGC496.
NPA: Oswego Industries, Inc., Fulton, NY.
Contracting Activity: Dept of Homeland Security, U.S. Coast Guard, HQ Contract Operations (CG–912), Washington, DC.
Coverage: C-List for 100% of the requirement of the U.S. Coast Guard, as aggregated by the U.S. Coast Guard.

Spinner, Salad

NSN: M.R. 850.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C–List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Service

Service Type/Location: Custodial Service, Building #2596, Humphreys Engineer Center, 7701 Telegraph Road, Alexandria, VA.
NPA: MVLE, Inc., Springfield, VA.
Contracting Activity: Dept of the Army, XU W4LD USA HECSA, Alexandria, Va.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Paper, Toilet Tissue

NSN: 8540–01–483–8992.
NPA: Outlook-Nebraska, Inc., Omaha, NE.
Contracting Activity: General Services Administration, New York, NY.

Antifoam Compound, Silicon

NSN: 6850–01–506–6533.
NPA: East Texas Lighthouse for the Blind, Tyler, TX.
Contracting Activity: Defense Logistics Agency Support Troop, Philadelphia, PA.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management)

[FR Doc. 2011–7710 Filed 3–31–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 5/2/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 1/28/2011 (76 FR 5142–5143), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.
2. The action will result in authorizing small entities to provide the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Hospital Housekeeping Service, Ireland Army Community Hospital and associated clinics, 851 Ireland Loop, Fort Knox, KY.
NPA: Professional Contract Services, Inc., Austin, TX.
Contracting Activity: Dept of the Army, XR W40M Natl Region Contract OFC, Washington, DC.
Service Type/Location: Prime Vendor Support for Foreign Military Sales, RDECOM Contracting Center—Aberdeen, MD, (Off-site: 507 Kent Street, Utica NY).
NPA: Central Association for the Blind & Visually Impaired, Utica, NY.
Contracting Activity: Dept of the Army, PR W2DF RDECOM Acquisition Center, Aberdeen Proving Ground, MD.

Patricia Briscoe,

Deputy Director, Business Operations Pricing and Information Management).

[FR Doc. 2011–7711 Filed 3–31–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, April 6, 2011, 10 a.m.–11.a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

Matter To Be Considered

Decisional Matter: Bed Rails—Notice of Proposed Rulemaking

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.* For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: March 30, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–7965 Filed 3–30–11; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, April 6, 2011, 10 a.m.–11.a.m.

PLACE: Room 410, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matter To Be Considered

Decisional Matter: Bed Rails—Notice of Proposed Rulemaking

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast*. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: March 30, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–7973 Filed 3–30–11; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, this notice announces a meeting of the Department of Defense Historical Advisory Committee. The Committee will discuss the report of the Department of the Army Subcommittee. The meeting will be open to the public.

DATES: Tuesday, April 26, 2011, at 10 a.m.

ADDRESSES: The meeting will be held on the 14th Floor, Suite 14038—Conference Room, 1777 North Kent Street, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Thorne at 703–588–7890 for information or upon arrival at the building in order to be admitted.

Dated: March 23, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–7699 Filed 3–31–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of a Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Defense Business Board (DBB) (hereafter referred to as "the Board").

DATES: The public meeting of the Defense Business Board will be held on Thursday, April 21, 2011. The meeting will begin at 12:45 p.m. and end at 3 p.m.

ADDRESSES: Room 3E863 in the Pentagon, Washington, DC (escort required; See guidance in section below, "Public's Accessibility to the Meeting.")

FOR FURTHER INFORMATION CONTACT: Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Debora.Duffy@osd.mil,* (703) 697–2168.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: At this meeting, the Board will deliberate draft findings and recommendations from the "Assessing Global Logistics Management," "Energy Acquisition," "Military Mail" and "Skill Sets for Program Managers" Task Groups. The Board will also receive an update from the "Military Retirement" Task Group. The mission of the Board is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense.

Agenda:

Public Session

12:45–2:45 Deliberation of Task Group Recommendations

—Assessing Global Logistics Management

—Energy Acquisition

—Military Mail

—Skill Sets for Program Managers

2:45–3:00 Task Group Updates

—Military Retirement

End of public session.

Availability of Materials for the Meeting: A copy of the agenda for the April 21, 2011 meeting and the terms of reference for the Task Groups may be obtained at the meeting or from the Board's Web site at *http://dbb.defense.gov/meetings.html* under "Upcoming Meetings: April 21, 2011."

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, part of this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public session of the meeting must contact Ms. Debora Duffy at the number listed in this notice no later than noon on Wednesday, April 13th to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance in time to complete security screening by no later than 12:15 p.m. To complete security screening, please come prepared to present two forms of identification and one must be a pictured identification card.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Duffy at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Administrative Work Session: Prior to the Public Session, the DBB will conduct an Administrative Work Session starting at 8:30 a.m. and ending at 9 a.m. to address administrative matters. The DBB will conduct a Preparatory Work Session starting at 9 a.m. and ending at 12:30 p.m. to prepare for the next meeting of the DBB. Pursuant to 41 CFR 102–3.160, the public may not attend the Administrative and Preparatory Work Sessions.

Committee's Designated Federal Officer: The Board's Designated Federal Officer is Captain Michael B. Bohn, USN, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *michael.bohn@osd.mil,* (703) 697–2346. For meeting information please contact Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Debora.Duffy@osd.mil,* (703) 697–2168.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section

10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public session.

Written comments should be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via e-mail to the address for the DFO given in this notice in either Adobe Acrobat or Microsoft Word format. Please note that since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Dated: March 29, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–7700 Filed 3–31–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0037]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on May 2, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830, or Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 22, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 23, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 10

SYSTEM NAME:

The Defense Biometric Identification Data System (May 6, 2009, 74 FR 20930)

CHANGES:

System ID: DMDC 10

Delete entry and replace with "DMDC 10 DoD."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93955–6771.

For a list of installations using this system, contact the system manager."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All individuals who request or have been granted physical access to DoD installations and facilities or using facilities interfacing with Defense Manpower Data Center Physical Access Control Systems. All individuals who have been or will be denied access to a DoD installation or facility using or interfacing with Defense Manpower Data Center Physical Access Control System based on the decision of the facility commander in charge of physical access control."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Personal data includes name, grade, Social Security Number (SSN), DoD ID number, status, date and place of birth, weight, height, eye color, hair color, gender, nationality, race, tribe, passport information, country of citizenship, home and work addresses, personal and work e-mail addresses and telephone numbers, marital status, index fingerprints or 10-print rolled and slapped fingerprints, iris scans, hand geometry and/or photographs, dates of issue and expiration of facility and installation access credentials.

Privately owned vehicle information includes name of vehicle manufacturer, model year, color and vehicle type, license plate type (e.g., personal, commercial) and number, vehicle identification number (VIN), and current registration, automobile insurance, and driver's license data.

Information on personal property stored on a military installation or facility contains data on government-issued and personal weapons, such as type, serial number, manufacturer, caliber, and firearm registration date; storage location data to include unit, room, building, and phone number; and type(s) of personal property (e.g., bicycles) and description of property, serial number, and color."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 113, Secretary of Defense; Directive-Type Memorandum (DTM) 09–012, Interim Policy Guidance for DoD Physical Access Control; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 1000.25, DoD Personnel Identity Protection (PIP) Program; DoD Instruction 5200.08, Security of DoD Installations and Resources; DoD 5200.08–R, Physical Security Program; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "The records support DoD physical security and information assurance programs, to issue individual facility/installation access credentials, and for identity verification purposes. The system also is used to record personal vehicles and

property registered with the DoD and for producing facility management reports. The records may be accessed by other physical access control systems for further verification at other sites. Records may also used for law enforcement purposes."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Paper file folders and electronic storage media."

RETRIEVABILITY:

Retrieved primarily by name, SSN, vehicle identifiers, or weapon identification data. However, data may also be retrieved by other data elements such as passport number, photograph, fingerprint data, and similar elements in the database.

SAFEGUARDS:

Delete entry and replace with "Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry is restricted by the use of locks, guards, and administrative procedures. Access to personal information is role based and limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of unique logon and passwords, which are changed periodically."

RETENTION AND DISPOSAL:

Delete entry and replace with "Discontinue records on deactivation or confiscation of access credentials. Delete data no less than 3 years old and no later than 5 years. Data is deleted between these 3–5 year period when no longer needed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Deputy for Identity, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy for Identity, Defense Manpower Data Center, 1600 Wilson Blvd, Suite 400, Arlington, VA 22209–2593.

Written requests should contain the full name, SSN, date of birth, installation name and/or region the record was created and current address and telephone number of the individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the full name, SSN, date of birth, installation name and/or region record was created and current address and telephone number of the individual and be signed."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Data is collected from the individual, the Defense Enrollment Eligibility Reporting System (DEERS), the Military Services, and the DoD Components."

* * * * *

DMDC 10 DoD

SYSTEM NAME:

Defense Biometric Identification Data System (DBIDS)

SYSTEM LOCATION:

Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93955–6771.

For a list of installations using this system, contact the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who request or have been granted physical access to DoD installations and facilities or using facilities interfacing with Defense Manpower Data Center Physical Access Control Systems. All individuals who have been or will be denied access to a DoD installation or facility using or interfacing with Defense Manpower Data Center Physical Access Control System based on the decision of the facility commander in charge of physical access control.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal data includes name, grade, Social Security Number (SSN), DoD ID number, status, date and place of birth, weight, height, eye color, hair color, gender, nationality, race, tribe, passport information, country of citizenship, home and work addresses, personal and work e-mail addresses and telephone numbers, marital status, index fingerprints or 10-print rolled and slapped fingerprints, iris scans, hand geometry and/or photographs, dates of issue and expiration of facility and installation access credentials.

Privately owned vehicle information includes name of vehicle manufacturer, model year, color and vehicle type, license plate type (e.g., personal, commercial) and number, vehicle identification number (VIN), and current registration, automobile insurance, and driver's license data.

Information on personal property stored on a military installation or facility contains data on government-issued and personal weapons, such as type, serial number, manufacturer, caliber, and firearm registration date; storage location data to include unit, room, building, and phone number; and type(s) of personal property (e.g., bicycles) and description of property, serial number, and color.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; Directive-Type Memorandum (DTM) 09–012, Interim Policy Guidance for DoD Physical Access Control; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 1000.25, DoD Personnel Identity Protection (PIP) Program; DoD Instruction 5200.08, Security of DoD Installations and Resources; DoD 5200.08–R, Physical Security Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The records support DoD physical security and information assurance programs, to issue individual facility/installation access credentials, and for identity verification purposes. The system also is used to record personal vehicles and property registered with the DoD and for producing facility management reports. The records may be accessed by other physical access control systems for further verification at other sites. Records may also used for law enforcement purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a

(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a (b) (3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper file folders and electronic storage media.

RETRIEVABILITY:

Retrieved primarily by name, SSN, vehicle identifiers, or weapon identification data. However, data may also be retrieved by other data elements such as passport number, photograph, fingerprint data, and similar elements in the database.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry is restricted by the use of locks, guards, and administrative procedures. Access to personal information is role based and limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of unique logon and passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Discontinue records on deactivation or confiscation of access credentials. Delete data no less than 3 years old and no later than 5 years. Data is deleted between these 3–5 year period when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy for Identity, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy for Identity, Defense Manpower Data Center, 1600 Wilson Blvd, Suite 400, Arlington, VA 22209–2593.

Written requests should contain the full name, SSN, date of birth, installation name and/or region the record was created and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the full name, SSN, date of birth, installation name and/or region record was created and current address and telephone number of the individual and be signed.

CONTESTING RECORDS PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents, and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data is collected from the individual, the Defense Enrollment Eligibility Reporting System (DEERS), the Military Services, and the DoD Components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–7701 Filed 3–31–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of section 10 U.S.C. 2113a and the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is renewing the charter for the Board of Regents of the Uniformed Services University of the Health Sciences (hereafter referred to as the Board).

The Board is a non-discretionary federal advisory committee that shall assist the Secretary of Defense in an advisory capacity in carrying out his responsibility to conduct the business of the Uniformed Services University of the Health Sciences.

The Board shall provide advice and recommendations on academic and administrative matters critical to the full accreditation and successful operation of the University.

The Board shall report to the Secretary of Defense through the Under Secretary of Defense for Personnel and Readiness.

The Under Secretary of Defense for Personnel and Readiness may act upon the Board's advice and recommendations.

Pursuant to 10 U.S.C. 2113a(b), the Board is composed of no more than fifteen members that shall include:

a. Nine persons outstanding in the field of health care, higher education administration, or public policy shall be appointed from civilian life by the Secretary of Defense;

b. The Secretary of Defense, or his designee, who shall be an ex officio member;

c. The surgeons general of the Uniformed Services, who shall be ex officio members;

d. The President of the University, who shall be a non-voting ex officio member.

The terms of office for each member of the Board (other than ex officio members) shall be six years except that:

a. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

b. Any member whose term of office has expired shall continue to serve until his successor is appointed.

One of the appointed members of the Board shall be designated as Chairman by the Secretary of Defense and shall be presiding officer of the Board.

Board members that are not ex officio members shall be appointed by the Secretary of Defense. Those members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as a special government employee. Pursuant to 10 U.S.C. 2113a(c) and (e), these special government employees shall serve a term of service of six years and shall be entitled to receive compensation at a rate fixed by the Secretary of Defense, in addition to travel expenses and per diem while serving away from their place of residence.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission and these subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other

appropriate federal statutes and regulations.

Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board, nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3019, and serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairman and the president of the University. The estimated number of Board meetings is four per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board of Regents of the Uniformed Services University of the Health Science's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Board of Regents of the Uniformed Services University of the Health Science.

All written statements shall be submitted to the Designated Federal Officer for the Board of Regents of the Uniformed Services University of the Health Science, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board of Regents of the Uniformed Services University of the Health Science Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board of Regents of the Uniformed Services University of the Health Science. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

Dated: March 29, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–7698 Filed 3–31–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Termination of Department of Defense Federal Advisory Committee

AGENCY: DoD.

ACTION: Termination of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), 41 CFR 102–3.55(a)(1), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and the Sunset provisions of Section 596 of Public Law 110–417, effective April 1, 2011 the Department of Defense gives notice that it is terminating the Military Leadership Diversity Commission.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

Dated: March 23, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–7696 Filed 3–31–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Patent Application Deadline for Advanced Battery Technology Related Patents for Exclusive, Partially Exclusive, or Non-Exclusive Licenses; Battery Day Patent Licensing Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army had announced the general availability of exclusive, partially exclusive or non-exclusive licenses relative to the following listing of intellectual property in the **Federal Register** on January 19, 2011 (76 FR 3118). A patent licensing meeting was subsequently held February 16, 2011 at the SAIC Enterprise Bldg Conference Center, 8301 Greensboro Drive, McLean, VA 22102. All patent license applications for the referenced intellectual property must be postmarked NLT April 15, 2011. Patent license applications may be downloaded at *http://www.arl.army.mil/www/default.cfm?page=556* (Battery Day Fact Sheets).

1. ARL 01–37—Choosing Electrolytes for Lithium/Air Batteries (US 7,585,579).
2. ARL 02–06—Solvent Systems Comprising a Mixture of Lactams and Esters for Non-Aqueous Electrolytes and Non-Aqueous Electrolyte Cells Comprising the Same (US 7,442,471 B1).
3. ARL 02–27—Additive for Enhancing the Performance of Electrochemical Cells (US 7,172,834 B1).
4. ARL 02–27 D1—Non-aqueous solvent electrolyte battery with additive alkali metal salt of a mixed anhydride combination of oxalic acid and boric acid (US 7,524,579 B1).
5. ARL 04–29—Safer, Less Expensive Lithium Ion Batteries (US 7,629,080).
6. ARL 05–18—High Capacity Metal/Air Battery. Filed with USPTO on 4/1/2009 (S/N #12/416,309).
7. ARL 08–15—Improvement Through Protection: Enabling More Powerful Lithium Batteries. Provisional filed with USPTO on 5/13/2010 (S/N #61/334,265); non-provisional due by 5/13/2011.
8. ARL 08–37—Higher Voltage, Safer Lithium-Carbon Fluoride Battery. Filed with USPTO on 9/8/2010 (S/N #12/877,153).
9. ARL 08–39—Better Performing Lithium/Carbon Fluoride Battery. Filed with USPTO on 11/24/10; (S/N 61/416,923).
10. ARL 09–18—Increasing Performance by Reducing Resistance in Lithium Ion Batteries. Filed with USPTO on 2/3/2010 (S/N #12/699,182).
11. ARL 09–33—Pure LiBOB Salt & Purification Process. Filed with USPTO on 10/27/10 (S/N 61/407,153).
12. ARL 09–41—Longer Lasting Lithium/Oxygen Battery. Provisional filed with USPTO on 1/11/11, (S/N 61/431,602).
13. ARL 10–14—Ultra-Fast Bi-Directional Solid State Circuit Breaker (battery related). PATENT STATUS—To be filed prior to meeting.
14. ARL 10–28—Electrolyte for Next Generation 5V Li-ion Batteries. Provisional filed with USPTO on 7/6/2010 (S/N # 61/361,625).

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN:

RDRL–DB/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–7738 Filed 3–31–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2011–0005]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army is altering a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 2, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185, or Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 25, 2011, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," February 20, 1996, 61 FR 6427.

Dated: March 29, 2011.

Morgan F. Park,

OSD Federal Register Liaison Officer, Department of Defense.

A0601–210a USAREC

SYSTEM NAME:

Enlisted Eligibility Files (December 8, 2005, 70 FR 72998).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Enlisted Applicants Eligibility Files."

SYSTEM LOCATION:

Delete entry and replace with "U.S. Army Accessions Command (ATAL–I), 1600 Spearhead Division, Department 600, Fort Knox, KY 40122–5600."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Applicants processing for enlistment in the regular Army or the Army Reserve."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Full name; other names used; Social Security Number (SSN); truncated SSN; driver's license number; citizenship; legal status; gender; race/ethnicity; date of birth; personal cell telephone number; home telephone number; personal e-mail address; military status; military history; current mailing address and/or home address; previous addresses; family information (mother, father, siblings; spouse, children, and other dependents); religious preferences; security clearance; fingerprints; travel outside the United States (where, when); foreign languages spoken, beneficiaries; financial information; medical information; law information; employment information; emergency contact; education information; and system-generated, record specific identification number via the Guidance Counselor Resource Center (GCRC) application."

* * * * *

PURPOSE(S):

Delete entry and replace with "To make determinations on enlistment eligibility to include those who have requested a conduct, medical, and/or administrative waiver(s); determination of military occupational specialty qualifications; determination of civilian acquired skill qualification; exceptions to policy; and prior service personnel requesting an enlistment grade determination. To conduct enlistment processing of applicants for the regular Army and Army Reserve."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

To investigative service provider (ISP) for the sole purpose of conducting personnel security or suitability investigations on behalf of the Department of the Army to determination enlistment eligibility.

Note: This system of records contains Personally Identifiable Health information (PHI). The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

STORAGE:

Delete entry and replace with "Electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "By Social Security Number (SSN) or a system generated, record specific identification number via the Guidance Counselor Resource Center (GCRC) application."

SAFEGUARDS:

Delete entry and replace with "Electronically stored records are

maintained in a secure datacenter on a secure Army installation with all protections afforded by the Army and Defense Information System Agency (DISA) security. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared and trained. Access is controlled through role based controls leveraging active directory authentication and system software with password-protected access. Buildings employ locks or rooms are security-controlled areas accessible only to authorized persons. Use of Common Access Card (CAC) is used to authenticate and lock out unauthorized access.

RETENTION AND DISPOSAL:

Delete entry and replace with "Destroyed after 3 years, by electronic deletion; paper originals are returned to the owning applicant or destroyed by shredding after scanning."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, U.S. Army Accessions Command (ATAL–I), 1600 Spearhead Division, Department 600, Fort Knox, KY 40122–5600."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals wanting to know whether information on themselves is contained in this system of records should write to the Commander, U.S. Army Accessions Command (ATAL–I), 1600 Spearhead Division, Department 600, Fort Knox, KY 40122–5600.

Written requests should contain the full name, Social Security Number (SSN), date of birth, military status and current mailing address and any details which may assist in locating record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals wanting access to records about themselves should write to the Commander, U.S. Army Accessions Command (ATAL–I), 1600 Spearhead Division, Department 600, Fort Knox, KY 40122–5600.

Written requests should contain the full name, Social Security Number (SSN), date of birth, military status and current mailing address and any details which may assist in locating record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

* * * * *

A0601–210a USAREC

SYSTEM NAME:

Enlisted Applicants Eligibility Files.

SYSTEM LOCATION:

U.S. Army Accessions Command (ATAL–I), 1600 Spearhead Division, Department 600, Fort Knox, KY 40122–5600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants processing for enlistment in the regular Army or the Army Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name; other names used; Social Security Number (SSN); truncated SSN; driver's license number; citizenship; legal status; gender; race/ethnicity; date of birth; personal cell telephone number; home telephone number; personal e-mail address; military status; military history; current mailing address and/or home address; previous addresses; family information (mother, father, siblings; spouse, children, and other dependents); religious preferences; security clearance; fingerprints; travel outside the United States (where, when); foreign languages spoken, beneficiaries; financial information; medical information; law information; employment information; emergency contact; education information; and system-generated, record specific identification number via the Guidance Counselor Resource Center (GCRC) application.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 504, Persons not qualified; DoD 6025.18–R, The DoD Health Information Privacy Regulation; Army Regulation 601–210, Personnel Procurement Active and Reserve Components Enlistment Program, and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To make determinations on enlistment eligibility to include those who have requested a conduct, medical, and/or administrative waiver(s); determination of military occupational specialty qualifications; determination of civilian acquired skill qualifications; exceptions to policy; and prior service personnel requesting an enlistment grade determination. To conduct enlistment processing of applicants for the regular Army and Army Reserve.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

To investigative service provider (ISP) for the sole purpose of conducting personnel security or suitability investigations on behalf of the Department of the Army to determination enlistment eligibility.

Note: This system of records contains Personally Identifiable Health information (PHI). The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By Social Security Number (SSN) or a system generated, record specific identification number via the Guidance Counselor Resource Center (GCRC) application.

SAFEGUARDS:

Electronically stored records are maintained in a secure datacenter on a secure Army installation with all protections afforded by the Army and Defense Information System Agency (DISA) security. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared and trained. Access is controlled through role based controls leveraging active directory authentication and system software with password-protected access. Buildings employ locks or rooms are security-controlled areas accessible only to authorized persons. Paper and electronic records are maintained in approved security containers. Use of Common Access Card (CAC) is used to authenticate and lock out unauthorized access.

RETENTION AND DISPOSAL:

Destroyed after 3 years, by electronic deletion; paper originals are returned to the owning applicant or destroyed by shredding after scanning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Accessions Command (ATAL–I), 1600 Spearhead Division, Department 600, Fort Knox, KY 40122–5600.

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information on themselves is contained in this system of records should write to the Commander, U.S. Army Accessions Command (ATAL–I), 1600 Spearhead Division, Department 600, Fort Knox, KY 40122–5600.

Written requests should contain the full name, Social Security Number (SSN), date of birth, military status and current mailing address and any details which may assist in locating record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

RECORD ACCESS PROCEDURES:

Individuals wanting access to records about themselves should write to the Commander, U.S. Army Accessions Command (ATAL–I), 1600 Spearhead Division, Department 600, Fort Knox, KY 40122–5600.

Written requests should contain the full name, Social Security Number (SSN), date of birth, military status and current mailing address and any details which may assist in locating record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, employers, probation officials, law enforcement officials, school officials, personal references, transcripts, medical records, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 2011–7702 Filed 3–31–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2011–0004]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a system of Records.

SUMMARY: The Department of the Army is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 2, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr Leroy Jones at (703) 428–6185, or Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Department of the Army proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed

deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 24, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

A0614–100/200 TRADOC

Recruiter Identification/Assignment Records (July 7, 2008, 73 FR 38415).

REASON:

The procedures for identifying, screening, and selecting Soldiers for recruiting duty is now the responsibility and function of the Human Resources Command (HRC). The branch at HRC responsible for this function is the TRADOC Assignments Branch (TAB), who oversees the selection, assignment, and scheduling of training for all recruiters, drill sergeants, and Advanced Individual Training (AIT) platoon sergeants.

The U.S. Army Recruiting Command (USAREC) is no longer involved in the screening, selection, and management of recruiters until they graduate from the Army Recruiting Course (ARC).

[FR Doc. 2011–7693 Filed 3–31–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

European Union-United States Atlantis Program

AGENCY: Office of Postsecondary Education, Department of Education.

Overview Information: Applications for New Awards; International and Foreign Language Education (IFLE): Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: European Union-(EU) United States (U.S.) Atlantis Program Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116J.

Dates:

Applications Available: April 1, 2011.

Deadline for Transmittal of Applications: May 24, 2011.

Deadline for Intergovernmental Review: July 25, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas in postsecondary education or approaches to improve postsecondary education.

Priorities: This competition includes one absolute priority and three invitational priorities.

Absolute Priority: This priority is from the notice of final priorities for this program, published in the **Federal Register** on December 11, 2009 (74 FR 65764). For FY 2011, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

This priority supports the formation of educational consortia between EU and U.S. institutions. To meet this priority, the applicant must propose a project that encourages cooperation in the coordination of curricula; the exchange of students, if pertinent to grant activities; and the opening of educational opportunities between the U.S. and countries in the EU. In order to be eligible for an award under this priority, the applicant in the U.S. must be a U.S. institution, and the applicant in the EU must be an EU institution.

EU institutions participating in any consortium proposal under this priority may apply to the Directorate-General for Education and Culture, European Commission for funding under a separate but parallel EU competition. Within this absolute priority, we are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: For FY 2011, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1

This priority invites projects that include a plan to work with an institution of higher education in Muslim-majority countries (in addition to countries in the EU) to create a partnership that would focus on key elements of international student exchange programs such as: Developing cooperative bilateral arrangements, crafting inter-institutional bilateral Memorandums of Understanding (MOUs), student recruitment and selection strategies, student language and preparation requirements, tuition reciprocity agreements, student fees, curriculum development, student credit transfer and/or recognition, and financial sustainability.

Invitational Priority 2

In order to increase the participation of underrepresented students in international education and foreign language learning, the Secretary encourages applications from consortia that include community colleges or minority-serving institutions eligible for assistance under part A or B of title III or under title V of the HEA. (Please refer to section III. 1. Eligible Applicants for additional information on applications from consortia.)

Invitational Priority 3

This priority invites applications from consortia in which the lead applicant institution has not served as a lead or partner grantee institution in a consortia funded under this program since FY 2006. (Please refer to section III. 1. Eligible Applicants for additional information on applications from consortia and lead and partner applicant/grantee institutions.)

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities for this program, published in the **Federal Register** on December 11, 2009 (74 FR 65764).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $64,036,000 for the FIPSE program for FY 2011, of which we intend to use an estimated $2,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $35,000–$102,000 for the first year and $66,000–$456,000 for the duration of the grant.

Estimated Average Size of Awards: $35,000 for the first year and $70,000 for the duration of two-year Policy Oriented Measures grants that support public policy research on transatlantic topics; $45,000 for the first year and $180,000 for the duration of four-year Mobility grants that support curriculum

development and academic term exchanges; and $80,000 for the first year and $424,000 for the duration of five-year Transatlantic Degree grants that support the development and implementation of dual degrees. You can find a detailed description of each of these three types of grants in the program guidelines and budget instructions in the application package for this competition.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs, other public and private nonprofit institutions and agencies, and combinations of these institutions and agencies. The application must designate a lead U.S. applicant and the lead EU applicant must clearly specify its partner applicants in the U.S.

2. *Cost Sharing or Matching:* This program 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 84.116J.

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 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 program.

Word Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to 6000 words (counting every word including "a", "the", *etc.*). We suggest using the following standards in formatting the application narrative:

- Double space (no more than three lines per vertical inch) all text in the application narrative, including 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 6000-word limit does not apply to the cover sheet; the budget section, including the budget narrative; the assurances and certifications; the one-page abstract; the resumes; the bibliography; or the letters of support.

We will reject your application if you exceed the word limit.

3. *Submission Dates and Times:*

Applications Available: April 1, 2011.

Deadline for Transmittal of Applications: May 24, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* 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.

Deadline for Intergovernmental Review: July 25, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

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, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the EU–U.S. Atlantis Program, CFDA number 84.116J, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of

the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the EU–U.S. Atlantis Program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.116, not 84.116J).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Tanyelle Richardson,

International and Foreign Language Education, U.S. Department of Education, 1990 K Street, NW., room 6017, Washington, DC 20006–8521. FAX: (202) 502–7860.

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 84.116J), 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 84.116J), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Additional Factor:* An additional factor we consider in selecting an application for an award is whether the application demonstrates a bilateral, innovative EU–U.S. approach to training and education.

3. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following two performance measures will be used by the Department in assessing the success of the EU–U.S. Atlantis Program:

(1) The extent to which funded projects are being replicated (*i.e.,* adopted or adapted by others).

(2) The manner in which projects are being institutionalized and continued after funding.

If funded, you will be asked to collect and report data from your project on steps taken toward achieving the outcomes evaluated by these performance measures (*i.e.,* institutionalization and replication). Consequently, applicants are advised to

include these two outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects. Institutionalization and replication are important outcomes that ensure the ultimate success of international consortia funded through this program.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Tanyelle Richardson, International and Foreign Language Education, U.S. Department of Education, 1990 K Street, NW., room 6017, Washington, DC 20006–8544. Telephone: (202) 502–7626 or by e-mail: *tanyelle.richardson@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

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 via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: March 29, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–7777 Filed 3–31–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Asian American and Native American Pacific Islander-Serving Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI) Program.

Notice inviting applications for new awards using fiscal year (FY) 2010 funds.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.382B.

DATES:

Applications Available: April 1, 2011.

Deadline for Transmittal of Applications: May 16, 2011.

Deadline for Intergovernmental Review: July 15, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The AANAPISI program authorized under section 371 of the Higher Education Act of 1965, as amended (HEA) provides grants to eligible institutions of higher education (IHEs) to enable them to improve their academic quality, increase their self sufficiency, and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation. At the time of application, IHEs applying for funds under the AANAPISI program must have an enrollment of undergraduate students that is at least 10 percent Asian American or Native American Pacific Islander.

Note 1: The AANAPISI program in this notice is authorized under section 371 of part F of title III of the HEA, which provides $5,000,000 annually through fiscal year 2019 for grants under the AANAPISI program to eligible institutions for activities specified under section 311(c) of the HEA. Section 311 of the HEA applies to the Strengthening Institutions Program (SIP), which is authorized under part A of title III of the HEA. Like the AANAPISI program authorized under section 371 of the HEA (section 371 AANAPISI program), the SIP provides grants to enable institutions to improve their academic quality, increase their self sufficiency, and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

Although the section 371 AANAPISI program is not part of the SIP, section 371(a)(6), (b)(2)(D)(iii), and (c)(2) of the HEA provide that the activities and eligibility provisions under SIP apply to the section 371 AANAPISI program. In light of the overlap of the statutory provisions in the section 371 AANAPISI program and the SIP, the Secretary has determined that it is appropriate to use regulatory requirements relating to the enrollment of needy students, expenditures, and tie-breaking factors that are based on the SIP regulations (see 34 CFR part 607) for use for the first grant competition in the section 371 AANAPISI program. To this end, the Secretary has decided to base the requirements for this competition on the following SIP regulations: enrollment of needy students provisions in 34 CFR 607.3 and the low education and general expenditures provisions in 34 CFR 607.4 as part of the eligibility criteria, and the tie-breaker provisions in 34 CFR 607.23(b).

Note 2: The eligibility criteria for this competition, including the enrollment of needy students and expenditure provisions, are set forth in section III. 1. *Eligible Applicants* of this notice. The tie-breaker provisions are set forth in section V. 3. *Tie-breaker for Grants* of this notice.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed program requirements. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. The Health Care and Education Reconciliation Act of 2010 (P.L. 111–152) (Reconciliation Act) provided new authority to implement the section 371 AANAPISI program. This is the first grant competition for the program since the enactment of the Reconciliation Act; therefore, this competition qualifies for the exemption.

Under section 437(d)(1) of GEPA, in order to ensure timely grant awards, the Secretary has decided to forego public comment on the following requirements for this competition: the enrollment of needy students provision based on 34 CFR 607.3 and the low education and general expenditures provision based on 34 CFR 607.4 as part of the eligibility criteria, and the tie-breaker provisions based on 34 CFR 607.23(b).

Priorities: This notice includes two competitive preference priorities that are from the notice of final supplemental priorities and definitions for discretionary grant programs,

published in the **Federal Register** on December 15, 2010 (75 FR 78486) (Supplemental NFP).

Competitive Preference Priorities: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional two and one-half points to an application that meets one of the priorities, or an additional five points to an application that meets both of these priorities.

These priorities are:

Competitive Preference Priority 1—Increasing Postsecondary Success

Projects that are designed to address the following priority area:

Increasing the number and proportion of high-need students (as defined in this notice) who persist in and complete college or other postsecondary education and training.

Competitive Preference Priority 2—Enabling More Data-Based Decision-Making

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in the following priority area:

Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success.

Definitions: The following definitions apply to this competition. These definitions are from the sources indicated in parentheses following the definition.

Asian American means a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent (including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam). (*See* section 371(c)(1) of the HEA; the Office of Management and Budget's Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity as published on October 30, 1997 (62 FR 58789)).

Native American Pacific Islander means any descendant of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States. (*See* section 371(c)(7) of the HEA.)

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, or who have disabilities. (*See* Supplemental NFP.)

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State, and local requirements regarding privacy. (*See* Supplemental NFP.)

Program Authority: 20 U.S.C 1067q(b)(2)(D)(iii); Section 2103 of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,922,298.

Note: Funds appropriated for this program for FY 2010 remain available for obligation in FY 2011 pursuant to 20 U.S.C. 1067q(b)(1)(B).

Estimated Range of Awards: $200,000–$400,000 per year.

Estimated Average Size of Awards: $300,000 per year.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

http://www.ed.gov/about/offices/list/ope/idues/index.html.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An IHE is eligible to receive funds if it qualifies as an Asian American and Native American Pacific Islander-Serving Institution (AANAPISI). To be an eligible AANAPISI, an IHE must—

(a) Have an enrollment of needy students, as defined in section 312(d) of the HEA (section 312(b)(1)(A) of the HEA; 20 U.S.C. 1058(b)(1)(A));

(b) Have, except as provided in section 392(b) of the HEA, the average educational and general expenditures of which are low, per full-time equivalent (FTE) undergraduate student, in comparison with the average educational and general expenditures per FTE undergraduate student of institutions that offer similar instruction (section 312(b)(1)(B) of the HEA; 20 U.S.C. 1058(b)(1)(B));

Note: To demonstrate an enrollment of needy students and low average educational and general expenditures per FTE undergraduate student, an IHE must be designated as an "eligible institution" in accordance with 34 CFR 607.3 through 607.5 and the notice inviting applications for designation as an eligible institution for the fiscal year for which the grant competition is being conducted.

(c)(1) Be legally authorized to provide, and provides within the State, an educational program for which such institution awards a bachelor's degree;

(2) Be a junior or community college; or

(3) Be the College of the Marshall Islands, the College of Micronesia/Federated States of Micronesia, or Palau Community College (section 312(b)(1)(C) of the HEA; 20 U.S.C. 1058(b)(1)(C));

(d) Be accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or be, according to such an agency or association, making reasonable progress toward accreditation (section 312(b)(1)(D) of the HEA; 20 U.S.C. 1058(b)(1)(D));

(e) Meet such other requirements as the Secretary may prescribe (section 312(b)(1)(E) of the HEA; 20 U.S.C. 1058(b)(1)(E));

(f) At the time of application, has an enrollment of undergraduate students that is at least 10 percent Asian American and Native American Pacific Islander students (as those terms are defined in this notice).

Note: To satisfy paragraph (f) of the eligibility criteria, an applicant, at the time it applies, must certify its total undergraduate enrollment and must certify that 10 percent of its undergraduate enrollment is Asian American or Native American Pacific Islander. To make this certification, the applicant must submit a completed assurance form, signed by an authorized official, along

with the application. (This assurance form is included in the application materials for this competition.)

Note: For purposes of establishing eligibility for this competition, the Notice Inviting Applications for Designation as Eligible Institutions for FY 2010 was published in the **Federal Register** on December 7, 2009 (74 FR 64059), and the deadline for application was January 6, 2010. The Notice Inviting Applications for Designation as Eligible Institutions for FY 2010 was reopened on August 13, 2010 (75 FR 49484), and the deadline for applications was September 13, 2010. Only institutions that submitted the required application and received designation through one of these processes are eligible to submit applications for this competition.

2. *Cost Sharing or Matching:* There are no cost sharing or matching requirements for this program.

3. *Other: Limit on Number of Grants.* A grantee under the Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI), Native American-Serving Nontribal Institutions (NASNTI), Hispanic Serving Institutions–STEM and Articulation (HSI–STEM), and Predominantly Black Institutions (PBI) programs authorized by section 371 of the HEA may apply for a grant using FY 2010 funds under any of these programs for which it is eligible. However, a successful applicant may receive only one grant under section 371.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet using the following address: *http://Grants.gov.* If you do not have access to the Internet, please contact Pearson Owens or Darlene Collins, U.S. Department of Education, 1990 K Street, NW., room 6043, Washington, DC 20006–8513. You may contact these individuals at the following e-mail addresses or telephone numbers:

Pearson.Owens@ed.gov (202) 502–7804;

Darlene.Collins@ed.gov (202) 502–7576.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting either of the program contacts listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

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. You must limit the application narrative (Part III) to no more than 50 pages, using the following standards. For purposes of determining compliance with the page limit, each page on which there are words will be counted as one full page.

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions. Text in charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes.
- 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 page limit does not apply to Part I, the Application for Federal Assistance (SF 424—cover sheet); the Supplemental Information for SF 424 Form required by the Department of Education; Part II, the budget section, Budget Information-Non-Construction Programs (ED 524), including the narrative budget justification; Part IV, the assurances and certifications; or the one-page program abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III). If you include any attachments or appendices not specifically requested in the program narrative (Part III of the application), these items will be counted as part of the program narrative for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: April 1, 2011.

Deadline for Transmittal of Applications: May 16, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* 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.

Deadline for Intergovernmental Review: July 15, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the 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, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you

can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under the AANAPISI program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the AANAPISI program, CFDA number 84.382B must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the AANAPISI program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.382, not 84.382B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: 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 PDF (Portable Document) format only. If you upload a file type other than a PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a

determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Pearson Owens or Darlene Collins, U.S. Department of Education, 1990 K Street, NW., room 6043, Washington, DC 20006–8513. *Fax:* (202) 502–7861.

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 84.382B), 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 84.382B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 in EDGAR. The total weight of the selection criteria is 100 points; the weight of each criterion is noted in parentheses.

a. *Need for project.* (Maximum 20 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers:

1. The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (10 points)

2. The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (5 points)

3. The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

b. *Quality of the project design.* (Maximum 15 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

1. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

2. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

c. *Quality of project services.* (Maximum 15 points) The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers:

1. The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (10 points)

2. The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (5 points)

d. *Quality of project personnel.* (Maximum 10 points) The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant

encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers:

1. The qualifications, including relevant training and experience, of the project director or principal investigator. (5 points)

2. The qualifications, including relevant training and experience, of key project personnel. (5 points)

e. *Adequacy of resources.* (Maximum 5 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

1. The extent to which the budget is adequate to support the proposed project. (3 points)

2. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (2 points)

f. *Quality of the management plan.* (Maximum 20 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

1. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (10 points)

2. The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

3. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (5 points)

g. *Quality of the project evaluation.* (Maximum 15 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

1. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

2. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

3. The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

2. *Review and Selection Process:* For five-year grants, awards will be made in rank order according to the average score received from a panel of three readers.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Tie-breaker for Grants.* To resolve ties in the reader scores of applications for grants, the Department will award one additional point to an application from an IHE that has an endowment fund for which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student at comparable institutions that offer similar instruction. In addition, to resolve ties in the reader scores of applications for grants, the Department will award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditures for library materials per FTE enrolled student at comparable institutions that offer similar instruction. We also will add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

1. Faculty development;

2. Funds and administrative management;

3. Development and improvement of academic programs;

4. Acquisition of equipment for use in strengthening management and academic programs;

5. Joint use of facilities; and

6. Student services.

For the purpose of these funding considerations, we will use the most recent complete data available (e.g., for FY 2010, we will use 2008–2009 data).

If a tie remains after applying the tie-breaker mechanism above, priority will be given to applicants that have the lowest endowment values per FTE enrolled student.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 34 CFR 75.118 and 34 CFR 607.31. 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.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing

the effectiveness of the AANAPISI program:

a. The percentage change, over a five-year period, of the number of full-time, degree-seeking undergraduates enrolling at AANAPISIs. Note that this is a long-term measure, which will be used to periodically gauge performance;

b. The percentage of first-time, full-time degree-seeking undergraduate students at four-year AANAPISIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same AANAPISI;

c. The percentage of first-time, full-time degree-seeking undergraduate students at two-year AANAPISIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same AANAPISI;

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year AANAPISIs who graduate within six years of enrollment; and

e. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year AANAPISIs who graduate within three years of enrollment.

In addition, the Department has developed the following efficiency measure for the AANAPISI program.

Efficiency measure: Federal cost per undergraduate degree at AANAPISIs.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Pearson Owens or Darlene Collins, U.S. Department of Education, 1990 K Street, NW., Room 6043, Washington, DC 20006–8513. You may contact these individuals at the following e-mail addresses or telephone numbers:

Pearson.Owens@ed.gov (202) 502–7804;

Darlene.Collins@ed.gov (202) 502–7576.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: March 29, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–7803 Filed 3–31–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of open meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). SEAB was reestablished pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: Monday, April 11, 2011 8 a.m.–5:30 p.m.

ADDRESSES: SLAC National Accelerator Laboratory, 2575 Sand Hill Road, Menlo Park, California 94025.

FOR FURTHER INFORMATION CONTACT: Amy Bodette, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–0383 or facsimile (202) 586–1441; e-mail: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was reestablished to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues and other activities as directed by the Secretary.

Purpose of the Meeting: The meeting will provide a briefing to the Board and an opportunity for the subcommittees to report to the full Board on their progress.

Tentative Agenda: The meeting will start at 8 a.m. on April 11th and will serve as an update meeting for the Board. The tentative meeting agenda includes a welcome, opening remarks from the Secretary, reports on planned activities from subcommittees and an opportunity for public comment. The meeting will conclude at approximately 5:30 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Amy Bodette no later than 5 p.m. on Thursday, April 7, 2011 by e-mail at *seab@hq.doe.gov.* Please provide your name, organization, citizenship and contact information. Entry to the SLAC National Accelerator Lab will be restricted to those who have confirmed their attendance in advance. Anyone attending the meeting will be required to present government issued identification. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting on Monday, April 11, 2011. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8 a.m. on April 11, 2011.

Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to Amy Bodette, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585 or by e-mail to *seab@hq.doe.gov.*

This notice is being published less than 15 days prior to the meeting date due to programmatic issues and a location change that had to be resolved prior to the meeting date.

Minutes: The minutes of the meeting will be available on the SEAB Web site *http://www.energy.gov/SEAB* or by contacting Ms. Bodette. She may be reached at the postal address or e-mail address above.

Issued at Washington, DC on March 28, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–7737 Filed 3–31–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–725D–001]

Commission Information Collection Activities (FERC–725D); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (75 FR 71678, 11/24/2010) requesting public comments. FERC received no comments on the FERC–725D and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 2, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0247 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed either on paper or on CD/DVD, and should refer to Docket No. IC11–725D–001. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling and eSubscription are not available for Docket No. IC11–725D–001, due to a system issue. All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected by the FERC–725D, "Facilities Design, Connections and Maintenance Reliability Standards" (OMB Control No. 1902–0247), is required to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o). On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[1] EPAct 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable reliability standards, which are subject to Commission review and approval. Once approved, the reliability standards may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce reliability standards.[2]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA. Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Council (NERC), as the ERO. The reliability standards developed by the ERO and approved by the Commission will apply to users, owners and operators of the Bulk-Power System, as set forth in each reliability standard.

On November 15, 2006, NERC filed 20 revised reliability standards and three new reliability standards for Commission approval. The Commission addressed the 20 revised Reliability Standards in Order No. 693.[3] The three new reliability standards were approved by FERC on December 27, 2007 in Order 705 and were designated by NERC as follows:

- FAC–010–1 (System Operating Limits Methodology for the Planning Horizon)
- FAC–011–1 (System Operating Limits Methodology for the Operations Horizon)
- FAC–014–1 (Establish and Communicate System Operating Limits).

These standards were subsequently modified by NERC in April of 2008 and submitted to the Commission for approval. On March 20, 2009 the Commission approved NERC's modifications to the FAC standards in Order No. 722 and NERC now designates these standards as FAC–010–2, FAC–011–2, and FAC–014–2.[4] The three newly approved FAC reliability standards require planning authorities and reliability coordinators to establish methodologies to determine system operating limits (SOLs) for the bulk-power system in the planning and operation horizons.

The three reliability standards do not require responsible entities to file information with the Commission. Nor, with the exception of a three year self-certification of compliance, do the Reliability Standards require responsible entities to file information with the ERO or Regional Entities. However, the Reliability Standards do require responsible entities to develop and maintain certain information for a specified period of time, subject to inspection by the ERO or Regional Entities. Reliability standard FAC–010–2 requires the planning authority to have a documented methodology for use in developing SOLs and must retain evidence that it issued its SOL methodology to relevant reliability coordinators, transmission operators and adjacent planning authorities. Likewise, the planning authority must respond to technical comments on the methodology within 45 days of receipt. Further, each planning authority must self-certify its compliance to the compliance monitor once every three years. Reliability standard FAC–011–2 requires similar documentation by the

[1] Energy Policy Act of 2005, Public Law 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), 16 U.S.C. 824o.

[2] 16 U.S.C. 824o(e)(3).

[3] On March 16, 2007, the Commission approved 83 of the 107 standards initially filed by NERC. *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR, 16,416 (April 4, 2007), 118 FERC ¶ 61,218 (2007), *order on reh'g* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[4] *Version Two Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 722, 126 FERC Stats. & Regs. 61,255 (2009).

reliability coordinator.[5] Reliability standard FAC–014–2 requires the reliability coordinator, planning authority, transmission operator, and transmission planner to verify compliance through self-certification submitted to the compliance monitor annually. These entities must also document that they have developed SOLs consistent with the applicable SOL methodology and that they have provided SOLs to entities identified in Requirement 5 of the reliability standard. Further, the planning authority must maintain a list of multiple contingencies and their associated stability limits.

Action: The Commission is requesting a three-year extension of the FERC–725D reporting requirements, with no changes.

Burden Statement: The estimated annual public reporting burden follows:

Data collection	No. of respondents [6] (1)	Average No. of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) x (2) x (3)
FERC–725D	470	1	Reporting: [7] 90	Reporting: 42,300
			Recordkeeping: 210	Recordkeeping: 98,700
Total	470			141,000

The estimated average annualized cost is increased from the previous estimate due to an increase in the number of entities who are registered for the Planning Authority, Reliability Coordinator, Transmission Planner, and Transmission Operator functions. The new estimated average annualized cost is $6,640,500 ($14,128.72 per respondent), as shown here:

- Reporting: [8] 42,300 hours @ $95/hour = $4,018,500.
- Recordkeeping: [9] 98,700 hours @ $26/hour = $2,566,200.

Storage: [10] 1,800 sq. ft. @ $31/sq. ft. = $55,800.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Dated: March 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7680 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

[5] The difference between the two is that FAC–10–1 deals with SOL methodology for the planning horizon and FAC–011–1 with SOL methodology for the operating horizon.

[6] This figure comes from NERC's compliance registry matrix which was updated on 10/27/10 and includes all entities registered as a Planning Authority, Reliability Coordinator, Transmission Planner, or Transmission Operator functions that are responsible for compliance with FAC–014–2.

[7] Hours are attributable to developing SOLs. Recordkeeping pertains to the documentation to be maintained for audits.

[8] Estimate based on hourly costs for legal, technical and administrative staff. *See http://www.bls.gov/oes/current/naics2_22.htm* and *http://www.marylandlawyerblog.com/2009/07/average_hourly_rate_for_lawyer.html.*

[9] Estimate based on hourly costs for technical and clerical staff. *See http://www.bls.gov/oes/current/naics2_22.htm.*

[10] Estimate based on in-office square foot costs obtained from a Commission assessment of the industry performed in 2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–138–000]

Texas Eastern Transmission, LP; Notice of Application

On March 15, 2011, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place two inactive supply laterals designated as Line 41–B–1 and Line 41–B–1–A. The abandonment project consists of approximately 16.8 miles of 12-inch diameter pipeline, 11.8 miles of 8-inch diameter pipeline, and associated appurtenances, located in federal waters offshore Louisiana in the Gulf of Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call

toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Questions regarding the application may be directed to Berk Donaldson, Rates & Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, TX 77251–1642, at (713) 627–4488 (phone), (713) 627–5947 (fax), or *bdonaldson@spectraenergy.com* or to Kathy Cash, Rates & Certificates, Texas Eastern, LP, P.O. Box 1642, Houston, TX 77251–1642, at (713) 627–4721 (phone) or (713) 627–5947 (fax).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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).

Comment Date: 5 p.m. Eastern Time on April 15, 2011.

Dated: March 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7676 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11910–016]

Symbiotics, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No.:* 11910–016.

c. *Date Filed:* March 21, 2011.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Applegate Dam Project.

f. *Location:* The project is located on the Applegate River, a tributary to the Rogue River, in Jackson County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Brent Smith, Chief Operating Officer, Symbiotics, LLC, P.O. Box 535, Rigby, Idaho 83442; telephone (208) 745–0834.

i. *FERC Contact:* Any questions regarding this notice should be directed to Mr. Anthony DeLuca (202) 502–6632 or *Anthony.deluca@ferc.gov.*

j. Deadline for filing comments, motions to intervene and protest: April 25, 2011. 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 at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–11910–016) on any comments, motions, or recommendations filed.

k. Description of Request: *Amendment to Transmission Line Configuration and Project Boundary:* Symbiotics, LLC proposes to bury all 15 miles of transmission lines from the powerhouse to their terminus at small substation in the community of Ruch, Oregon. The proposal would adjust the project's existing right-of-way (ROW) for the project's transmission lines from the above ground corridor to an adjacent subsurface location along Jackson County's utility ROW that follows Upper Applegate Road, Hamilton Road, and State Highway 238.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the

project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7683 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–30–000]

E.ON Climate & RenewablesNorth America, LLC, et al. v. Midwest Independent Transmission System Operator, Inc.; Notice of Complaint

Take notice that on March 22, 2011, The Midwest Generation Development Group, an ad hoc coalition comprised of Clipper Windpower Development Co., Inc., E.ON Climate & Renewables North America, LLC, Horizon Wind Energy LLC, Iberdrola Renewables, Inc. and Invenergy Wind Development LLC and Invenergy Thermal Development LLC (Complainants), pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2010) and section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, filed a formal complaint against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO or Respondent), requesting that the Commission find Option I under Attachment FF of the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff is unjust, unreasonable, unduly discriminatory and preferential in violation of the FPA as it pertains to network upgrades initially funded and financed by an interconnection customer through the Midwest ISO's Generation Interconnection Procedures and order the Midwest ISO to remove Option I from its Tariff effective March 22, 2011.

Complainants certify that copies of the complaint have been served on the contacts for the Midwest ISO as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 11, 2011.

Dated: March 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7679 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2615–037]

FPL Energy Maine Hydro LLC; Madison Paper Industries; Merimil Limited Partnership; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the 4.18-megawatt Brassua Hydroelectric Project, located on the Moose River, in Somerset County, Maine, and has prepared a draft Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

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.

Any comments on the EA should be filed within 45 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the

eComment system at *http://www.ferc.gov/docs-filing/eComment.asp.* You must include your name and contact information at the end of your comments.

For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426. Please affix "Brassua Hydroelectric Project No. 2615–037" to all comments. For further information, contact Steve Kartalia at (202) 502–6131.

Dated: March 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7687 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–96–000]

Corning Natural Gas Corporation; Notice of Filing

Take notice that on March 23, 2011, Corning Natural Gas Corporation submitted a revised baseline filing of their Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

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 7 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 Friday, April 1, 2011.

Dated: March 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7675 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–86–015; Docket No. EL07–88–015; Docket No. EL07–92–015]

Ameren Services Company, Northern Indiana Public Service Company v. Midwest Independent Transmission System Operator, Inc.; Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc, Southern Minnesota Municipal Power Agency, Wisconsin Public Power Inc., v. Midwest Independent Transmission System Operator, Operator, Inc.; Wabash Valley Power Association, Inc. v. Midwest Independent Transmission System Operator, Inc.; Notice of Filing

Take notice that on March 22, 2011, The Midwest Independent Transmission System Operator, Inc. filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff, Fourth Revised Volume, pursuant to the Federal Energy Regulatory Commission's Order issued August 30, 2010, *Midwest Indep. Trans. Sys. Operator, Inc.,* 132 FERC ¶ 61,186 (2010) (August 30 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 12, 2011.

Dated: March 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7678 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2778–062]

Idaho Power; Notice of Availability of Land Management Plan Update for the Shoshone Falls Project and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Land Management Plan Update.

b. *Project No.:* 2778–062.

c. *Date Filed:* December 22, 2010.

d. *Applicant:* Idaho Power.

e. *Name of Project:* Shoshone Falls Hydroelectric Project.

f. *Location:* The project is located in south-central Idaho on the Snake River from river mile 612.5 to river mile 617.1 in Twin Falls and Jerome counties.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* L. Lewis Wardle, Licensing Program Coordinator, Idaho Power, PO Box 70, 1221 W Idaho Street, Boise, ID 83702, (208) 388–2964, *lwardle@idahopower.com.*

i. *FERC Contact:* Dr. Mark Ivy, (202) 502–6156, *mark.ivy@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 25, 2011.

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 at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2778–062) on any comments, motions, or recommendations filed.

k. *Description of the Application:* Idaho Power Company, licensee of the Shoshone Falls Hydroelectric Project, has filed a Land Management Plan (LMP) update for the project. The LMP is a comprehensive plan to manage project lands including control of noxious weeds, protection and enhancement of riparian habitats, and protection and enhancement of shoreline habitats in a manner that is consistent with license requirements and project purposes, and to address the needs and interests of stakeholders.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7682 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2055–087]

Idaho Power; Notice of Availability of Land Management Plan Update for the Shoshone Falls Project and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Land Management Plan Update.

b. *Project No.:* 2055–087.

c. *Date Filed:* December 22, 2010.

d. *Applicant:* Idaho Power.

e. *Name of Project:* C.J. Strike Hydroelectric Project.

f. *Location:* The project is located in south-western Idaho on the Snake River from river mile 525 near Hammett to river mile 493 near Grand View in Owyhee and Elmore counties.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* L. Lewis Wardle, Licensing Program Coordinator, Idaho Power, PO Box 70, 1221 W Idaho Street, Boise, ID 83702, (208) 388–2964, *lwardle@idahopower.com.*

i. *FERC Contact:* Dr. Mark Ivy, (202) 502–6156, *mark.ivy@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 25, 2011.

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 at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2055–087) on any comments, motions, or recommendations filed.

k. *Description of the Application:* Idaho Power Company, licensee of the C.J. Strike Hydroelectric Project, has filed a Land Management Plan (LMP) update for the project. The LMP is a comprehensive plan to manage project lands including control of noxious weeds, protection and enhancement of riparian habitats, and protection and enhancement of shoreline habitats in a manner that is consistent with license requirements and project purposes, and to address the needs and interests of stakeholders.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7686 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13102–001]

Birch Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13102–001.

c. *Dated Filed:* February 2, 2011.

d. *Submitted by:* Birch Power Company.

e. *Name of Project:* Demopolis Lock and Dam Hydroelectric Project.

f. *Location:* On the Tombigbee River, in Marengo and Sumter Counties, Alabama. The project would occupy United States land, administered by the U.S. Army Corps of Engineers, for a transmission line and other ancillary facilities.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations

h. *Potential Applicant Contact:* Nicholas E. Josten, 2742 Saint Charles Avenue, Idaho Falls, ID 83404; (208) 528–6152; e-mail—*gsense@cableone.net*

i. *FERC Contact:* Jennifer Adams at (202) 502–8087; or e-mail at *jennifer.adams@ferc.gov.*

j. Birch Power Company filed its request to use the Traditional Licensing Process on February 1, 2011. Birch Power Company provided public notice of its request on February 5, 2011. In a letter dated March 25, 2011, the Director of the Office of Energy Projects approved Birch Power Company's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Alabama State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Birch Power Company filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*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 paragraph h.

n. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7684 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–139–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on March 16, 2011, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP11–139–000, an application pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to abandon in place a supply lateral that extends from the Matagorda Island Area Block 696 Platform, offshore Texas to a subsea interconnect at Matagorda Island Area Block 665, under Southern's blanket certificate issued in Docket No. CP82–406–000,[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Glenn A. Sheffield, Director, Rates and Regulatory, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, via telephone at (205) 325–3813 or e-mail: *glenn.sheffield@elpaso.com* or Tina S. Hardy, Rates and Regulatory, P.O. Box 2563, Birmingham, Alabama 35202–2563, via telephone at (205) 325–3668 or e-mail: *tina.hardy@elpaso.com.*

Specifically, Southern proposes to abandon 10 miles of 10-inch diameter pipeline that extends from Apache Corporation's (Apache) Platform A in the Matagorda Island Area Block 696, offshore Texas to a subsea tie-in with the existing 24-inch Matagorda Offshore Pipeline System at Matagorda Island Area Block 665. Southern states the Apache Platform ceased production operations in October 2010 and Apache plans to remove the platform in the second quarter of 2011. Southern states it has provided interruptible transportation service for three shippers through the supply lateral in the last twelve months and each customer has provided written consent in support of the abandonment project. Southern also states that it would cost approximately $13.8 million to replicate the facilities today.

Any person or the Commission's staff may, within 60 days after 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 regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: March 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7677 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

[1] 20 FERC ¶ 62,414 (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–145]

Dominion Virginia Power/North Carolina Power; Notice of Availability of Shoreline Management Plan Update for the Shoshone Falls Project and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Revised Shoreline Management Plan.

b. *Project No.:* 2778–062.

c. *Date Filed:* December 29, 2010.

d. *Applicant:* Dominion Virginia Power/North Carolina Power.

e. *Name of Project:* Roanoke Rapids and Gaston Hydroelectric Project.

f. *Location:* The project is located in south-central Idaho on the Snake River from river mile 612.5 to river mile 617.1 in Twin Falls and Jerome counties.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* L. Lewis Wardle, Licensing Program Coordinator, Idaho Power, P.O. Box 70, 1221 W Idaho Street, Boise, ID 83702, (208) 388–2964, *lwardle@idahopower.com.*

i. *FERC Contact:* Dr. Mark Ivy, (202) 502–6156, *mark.ivy@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 25, 2011.

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 at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2009–145) on any comments, motions, or recommendations filed.

k. *Description of the Application:* Dominion Virginia Power/North Carolina Power, licensee of the Roanoke Rapids and Gaston Hydroelectric Project, has filed a revised Shoreline Management Plan (SMP) for the project.

The SMP is a comprehensive plan to protect and enhance the two lakes' natural resources while encouraging economic development activities that complement or have neutral effects on those natural resources in a manner that is consistent with license requirements and project purposes, and to address the needs and interests of stakeholders.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7685 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2662–012; Project No. 12968–001]

FirstLight Hydro Generating Company, City of Norwich Department of Public Utilities; Notice Updating Procedural Schedule for Licensing

Take notice that the Hydropower Licensing Schedule for the Scotland Hydroelectric Project No. 2662 and Scotland Hydroelectric Project No. 12968 has been updated. Subsequent revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of Additional Information	May 8, 2011.
Issuance of the Better Adapted Statement Request	May 16, 2011.
Notice of Acceptance/Notice of Ready for Evironmental Analysis	May 16, 2011.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	July 15, 2011.
Filing of the Better Adapted Statement	July 15, 2011.
Commission issues EA	November 12, 2011.
Comments on EA	December 12, 2011.
Modified terms and conditions	February 10, 2012.

Dated: March 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7681 Filed 3–31–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8996–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 03/21/2011 through 03/25/2011

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site

satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110089, Draft EIS, HUD, CA, West Coast Recycling Group Metal Recycling Facility Project, Proposal to Develop and Operate a Scrap Metal Shredding and Recycling Facility at the Port of West Sacramento, Yolo County, CA, *Comment Period Ends:* 05/16/2011, *Contact:* David W. Tilley 916–617–4645.

EIS No. 20110090, Draft EIS, USFS, MN, Federal Hardrock Mineral Prospecting Permits Project, To Conduct Mineral Exploration Drilling and Geophysical Activities on the Superior National Forest, Cook, Lake, St. Louis and Koochiching Counties, MIN, *Comment Period Ends:* 05/16/2011, *Contact:* Loretta Cartner 218–626–4382.

EIS No. 20110091, Final EIS, HUD, WA, Sunset Area Community Planned Action, Proposal to Redevelopment of the Sunset Terrace Public Housing Community and Associated Neighborhood Growth and Revitalization, City of Renton, WA, *Review Period Ends:* 05/02/2011, *Contact:* Erika Conkling 425–430–6578.

EIS No. 20110092, Draft EIS, TVA, 00, Natural Resource Plan, To Determine How TVA Will Manage Its Natural Resource Over the Next 20 Years, Implementation, AL, GA, KY, MS, NC, TN and VA, *Comment Period Ends:* 05/16/2011, *Contact:* Charles P. Nicholson 864–632–3582.

EIS No. 20110093, Final EIS, NOAA, 00, Atlantic Sea Scallop Fishery Management Plan, Amendment 15, Implementation of the Annual Catch Limits (ACLs) and Accountability Measures (AMs) to Prevent Overfishing, Gulf of Maine, Georges Bank, *Review Period Ends:* 05/02/2011, *Contact:* Patricia A. Kurkul 978–281–9250.

EIS No. 20110094, Draft EIS, USFS, CA, Kirkwood Meadows Power Line Reliability Project, Proposal to Construct and Operate 34.5 kilovolt (kV) Power Line, Eldorado National Forest, Amador, Eldorado, and Alpine Counties, CA, *Comment Period Ends:* 05/31/2011, *Contact:* Susan A. Rodman 530–621–5298.

EIS No. 20110095, Draft EIS, USACE, MA, South Coast Rail Project, To Establish Commuter Passenger Transit Service between Boston and the Cities of New Bedford and Fall River, Bristol, Plymouth, Norfolk and Suffolk Counties, MA, *Comment Period Ends:* 05/27/2011, *Contact:* Alan Anacheka-Nasemann 978–318–8214.

EIS No. 20110096, Final EIS, STB, AK, Port MacKenzie Rail Line Extension Construction and Operation, Alaska Railroad Corporation, Port MacKenzie, AK, *Review Period Ends:* 05/02/2011, *Contact:* Dave Navecky 202–245–0294.

EIS No. 20110097, Final EIS, FRA, NV, DesertXpress High-Speed Passenger Train Project, Proposes to Construct and Operate High-Speed Passenger Train between Victorville, California and Las Vegas, Nevada, *Review Period Ends:* 05/02/2011, *Contact:* Wendy Messenger 202–493–6396.

Amended Notices

EIS No. 20100076, Final EIS, FRBSF, WA, WITHDRAWN—Federal Reserve Bank of San Francisco, Proposes to Sell the Property at 1015 Second Avenue that is Eligible for Listing on the National Register of Historic Places, located in Seattle, WA, *Review Period Ends:* 04/19/2010, *Contact:* Robert Kellar 415–974–2655. Revision to FR Notice Published 03/19/2010: Officially Withdrawn By the Preparing Agency.

Dated: March 29, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–7791 Filed 3–31–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9287–6]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to Salt Lake City, UT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality to Salt Lake City, UT for three vertical linear motion mixers to be installed in the City's Water Reclamation Facility anaerobic digesters. This is a project-specific waiver and only applies to the use of the specified product for the ARRA-funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. Vertical linear motion mixers are a proprietary mixing technology developed by Enersave Fluid Mixers, Inc. (Enersave) of Ontario, Canada. The City's waiver request states that the mixer's drive head is manufactured by Enersave in Canada and the mixer's vertical drive shaft and hydro-disk will be manufactured in the United States (U.S.). There are no U.S. manufacturers of vertical linear motor mixers that meet the project specifications. The Regional Administrator is making this determination based on the review and recommendation of EPA Region 8's Technical & Financial Services Unit. Salt Lake City has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA.

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Recovery Act Coordinator, (303) 312–7814, or Brian Friel, SRF Coordinator, (303) 312–6277, Technical & Financial Services Unit, Water Program, Office of Partnerships & Regulatory Assistance, U.S. EPA Region 8, 1595 Wynkoop St., Denver, CO 80202.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to Salt Lake City for the purchase of three vertical linear motion mixers which have a drive head that is manufactured by Enersave in Canada. This manufactured good will be used as part of Salt Lake City's Water Reclamation Facility's capacity upgrades.

Section 1605 of the ARRA requires that none of the appropriated funds may be used 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, or unless a waiver is provided to the recipient by the head of the appropriate agency, in this case EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent

with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The April 28, 2009 EPA HQ Memorandum ("EPA April memo"), "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009'," defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." It further defines *satisfactory quality* as "the quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs."

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring cities such as Salt Lake City to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA's national contractor prepared a technical assessment report dated February 3, 2011, based on the submitted waiver request. The report stated that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. The assessment confirmed the waiver applicant's claim that there are no comparable domestic products that can meet the project specifications.

The Technical & Financial Services Unit has reviewed this waiver request and has determined that the supporting documentation provided by Salt Lake City is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the EPA April memo: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet Salt Lake City's performance specifications and requirements, a waiver from the Buy American requirement is justified.

EPA has determined that the City's waiver request may be treated as timely even though the request was made after the construction contract was signed. Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA has evaluated the City's request to determine if the request constitutes a late request. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the City's request, though made after the date that the contract was signed, can be evaluated as timely because the need for the waiver was not reasonably foreseeable. The waiver request was submitted after the contract date due to a change order that was approved on June 14, 2010. The original project only included installing new covers on the digesters; however, once the project started, it was determined that there were major structural deficiencies and the digester tanks needed to be rehabilitated as well, which included installing new mixers. As soon as it was determined that the mixers had non-U.S. components, Salt Lake City started the waiver request process. Accordingly, EPA will evaluate the request as a timely request.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, Salt Lake City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of three vertical linear motion mixers using ARRA funds as specified in the City's request of January 25, 2011. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

Authority: Public Law 111–5, section 1605.

Dated: March 18, 2011.

James Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–7786 Filed 3–31–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, April 5, 2011, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–7868 Filed 3–30–11; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012112–001.

Title: Evergreen/Maersk Slot Charter Agreement.

Parties: Evergreen Line Joint Service Agreement and A.P. Moller-Maersk A/S.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000, New York, NY 10006–2802

Synopsis: The amendment extends the agreement through May 31, 2011.

Dated: March 29, 2011.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–7811 Filed 3–31–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Grant Program Information Collection Request

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Submission for OMB Review: Comment Request.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13). This information collection, "Labor-Management Cooperation Grant Program Information Collection Request" (OMB Control No. 3076–0006) will be used to collect information to determine applicant suitability, to monitor grant project status and for grant program evaluation.

The OMB is particularly interested in comments which:

(i) Evaluate whether the proposed collection of information is necessary forthe proper performance of the functions of the agency, including whetherthe information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimates of the burden of theproposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected;

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic collection technologies or other forms of information technology, *e.g.* permitting electronic and fax submission of responses.

Approximately 40 respondents will complete the grant kit annually. The estimated burden per respondent is 4.5 hours. The estimated total annual burden is 180 hours.

Affected Entities: Potential applicants and/or grantees who received our grant application kit. Also applicants who have received a grant from FMCS.

DATES: Comments should be received by OMB within 30 calendar days from the date of this publication.

ADDRESSES: Send comments to: E-mail: *oira_submission@omb.eop.gov.* Please include the FMCS form number, if applicable, the information collection title and the OMB control number in the subject line of your message. Comments may also be sent to fax number 202.395.5806 to the Attention of Desk Officer for FMCS.

SUPPLEMENTARY INFORMATION: For additional information, see the related 60-day notice published in the **Federal Register** at Vol. 76, No. 16 on January 25, 2011.

Dated: March 28, 2011.

Michael J. Bartlett,

Deputy General Counsel.

[FR Doc. 2011–7674 Filed 3–31–11; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Council for the Elimination of Tuberculosis, Department of Health and Human Services, has been renewed for a 2-year period through March 15, 2013.

For information, contact Hazel Dean, Sc.D., M.P.H., Designated Federal Officer, Advisory Council for the Elimination of Tuberculosis, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E–10, Atlanta, Georgia 30333, telephone 404/639–8000 or fax 404/639–8600.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 25, 2011.

Andre Tyler,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–7754 Filed 3–31–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates:

8 a.m.–5 p.m., June 2, 2011 (Closed).

8 a.m.–5 p.m., June 3, 2011 (Closed).

Place: Hotel 1000, 1000 First Avenue, Seattle, Washington 98104, Telephone (206) 957–1000, Fax (206) 957–4747.

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.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that funded research will promote these program goals.

Matters To Be Discussed: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications. These portions of 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, Centers for Disease Control and Prevention, pursuant to Section 10(d) Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Price Connor, PhD, NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E20, Atlanta, Georgia 30333, Telephone (404) 498–2511, Fax (404) 498–2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: March 25, 2011.

Andre Tyler,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–7752 Filed 3–31–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response (BSC, OPHPR)

In accordance with section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC announces the following meeting of the aforementioned committee:

Time And Date: 3 p.m.–5 p.m., April 22, 2011.

Place: CDC, 1600 Clifton Road, NE., Global Communications Center, Building 19, Rooms 245/246, Atlanta, Georgia 30333.

This meeting is also accessible by Web Conference. Please contact the BSC Coordinator (*see* Contact Person for More Information) to obtain further instructions on how to participate by phone and online.

Status: Open to the public limited only by the space available. The meeting room accommodates approximately 40 people. Participation by Web Conference is limited to 50 ports. Visitors to the CDC Roybal campus must be processed in accordance with established federal policies and procedures and should pre-register for the meeting as described in Additional Information for Visitors.

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: *http://emergency.cdc.gov/cdcpreparedness/science/counselors.asp.*

Matters To Be Discussed: The agenda items for this meeting include: A briefing to the Board on the findings from the external peer review of OPHPR's Division of Emergency Operations followed by a vote on final recommendations, and updates from liaison representatives to the Board to share key highlights of their organization's activities that are relevant to the OPHPR mission, as time permits.

Additional Information for Visitors: All visitors to the CDC Roybal campus are required to present a valid form of picture identification issued by a State, federal or international government. To expedite the security clearance process for visitors to the CDC Roybal campus, all visitors must pre-register by submitting the following information by e-mail or phone (see Contact Person for More Information) no later than 12 noon (EDT) on Friday, April 15, 2011:

- Full Name,
- Organizational Affiliation,
- Complete Mailing Address,
- Citizenship, and
- Phone Number or E-mail Address.

For foreign nationals or non-U.S. citizens, pre-approval is required. Please contact the BSC Coordinator (see Contact Person for More Information) at least 7 days in advance of the posted pre-registration deadline for additional security requirements that must be met.

Contact Person for More Information: Matthew Jennings, BSC Coordinator, OPHPR, CDC, 1600 Clifton Road, NE., Mailstop D–44, Atlanta, GA 30333, Telephone: (404) 639–7357; Facsimile: (404) 639–7977; E-mail: *OPHPR.BSC.Questions@cdc.gov*.

The Director, Management Analysis and Service Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: March 25, 2011.

Andre Tyler,

Acting Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–7749 Filed 3–31–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10361]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

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:* Extension without change of a currently approved collection; *Title of Information Collection:* Request for Adjustment to the Medical Loss Ratio Standard for a State's Individual Market; *Use:* Under section 2718 of the Public Health Service Act (PHS Act), a health insurance issuer (issuer) offering group or individual health insurance coverage must submit a report to the Secretary beginning in June of 2012 for calendar year 2011. The reported data allows for the calculation of an issuer's medical loss ratio (MLR) by market (individual, small group, and large group) within each State in which the issuer conducts business. The PHS Act establishes a MLR standard for each market segment that issuers must meet. A health insurance issuer who fails to meet the MLR standard for a plan year must rebate to enrollees, on a pro rata basis, the difference between its MLR and the MLR standard.

Section 2718(b)(1)(A)(ii) allows the Secretary to lower the 80% MLR standard in the individual market in a State if the application of the 80% MLR may destabilize the individual market in such State. An interim final rule (IFR) implementing the MLR was published on December 1, 2010 (75 FR 74865) and was modified by technical corrections on December 30, 2010 (75 FR 82277), which added Part 158 to Title 45 of the Code of Federal Regulations. The IFR is effective January 1, 2011. Under 45 CFR 158.301 (75 FR 74864, 74930), States requesting that HHS lower the MLR standard must submit information that supports their assertion that the individual market in their State may destabilize absent an adjustment to the MLR. Much of the information requested is currently only available at

the State level. HHS must have such information in order to ascertain whether market destabilization has a high likelihood of occurring. *Form Number:* CMS–10361 (OMB Control No. 0938–1114); *Frequency:* Once; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 20; *Number of Responses:* 20; *Average Hours per Response:* 185; *Total Annual Hours:* 3,700. (For policy questions regarding this collection, contact Carol Jimenez at (301) 492–4109. For all other issues regarding this collection, 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 at 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 *May 31, 2011:*

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.

Dated: March 28, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–7742 Filed 3–31–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–265–11, CMS–381, and CMS–10123 and 10124]

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:* Independent Renal Dialysis Facility Cost Report; *Use:* The Independent Renal Dialysis Facility Cost Report, is filed annually by providers participating in the Medicare program to identify the specific items of cost and statistics of facility operation that independent renal dialysis facilities are required to report. The forms are revised in accordance with the End-Stage Renal Disease Prospective Payment System Final Rule published August 12, 2010 which implemented statutory requirements of the Medicare Improvements for Patients and Providers Act (MIPPA), enacted July 15, 2008. Additionally, the forms are revised to incorporate data previously reported on the Provider Cost Report Reimbursement Questionnaire, Form CMS–339. *Form Number:* CMS–265–94 (OMB#: 0938–0236); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 5,654 *Total Annual Responses:* 5,654; *Total Annual Hours:* 367,510 (For policy questions regarding this collection contact Gail Duncan at 410–786–7278. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Identification of Extension Units of Medicare Approved Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers and Supporting Regulations in 42 CFR 485.701–485.729; *Use:* The collected information is used in conjunction with 42 CFR 485.701 through 485.729 governing the operation of providers of outpatient physical therapy and speech-language pathology services. The provider uses the form to report to the State survey agency extension locations that it has added since the date of last report. The form is used by the State survey agencies and by the CMS regional offices to identify and monitor extension locations to ensure their compliance with the Federal requirements for the providers of outpatient physical therapy and speech-language pathology services; *Form Number:* CMS–381 (OMB #: 0938–0273); *Frequency:* Annually; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 2,960; *Total Annual Responses:* 2,960; *Total Annual Hours:* 740. (For policy questions regarding this collection contact Georgia Johnson at 410–786–6859. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notice of Provider Non-Coverage (CMS–10123) and Detailed Explanation of Non-Coverage (CMS–10124); *Use:* The Notice of Medicare Provider Non-Coverage (CMS–10123) is used to inform fee-for-service Medicare beneficiaries of the determination that their provider services will end, and of their right to an expedited review of that determination. The Detailed Explanation of Non-Coverage (CMS–10124) is used to provide beneficiaries who request an expedited determination with detailed information of why the services should end. The revised Notice of Provider Non-Coverage and Detailed Explanation of Provider Non-Coverage will no longer require use of the beneficiary's Medicare number as a patient identifier. Instead, when applicable, providers may use a number that helps to link the notice with a related claim. *Form Number:* CMS–10123 and 10124 (OMB# 0938–0953); *Frequency:* Occasionally; *Affected Public:* Business or other for-profit, not-for-profit institutions, and Individuals or households; *Number of Respondents:*

5,314,164; *Total Annual Responses:* 5,314,194; *Total Annual Hours:* 885,699.

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 at 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 *May 31, 2011:*

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.

Dated: March 25, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–7746 Filed 3–31–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–148 and CMS–R–266]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

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:* Extension without change of a currently approved collection; *Title of Information Collection:* Limitations on Provider Related Donations and Health Care Related Taxes; Limitation on Payments for Disproportionate Share Hospitals and Supporting Regulations in 42 CFR 433.68, 433.74 and 447.272; *Use:* The collected information collection is necessary to ensure compliance with sections 1903 and 1923 of the Social Security Act by helping to prevent payments of Federal financial participation on amounts prohibited by statute; *Form Number:* CMS–R–148 (OMB#: 0938–0618); *Frequency:* Quarterly and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 50; *Total Annual Responses:* 40; *Total Annual Hours:* 3,200. (For policy questions regarding this collection contact Rory Howe at 410–786–4878. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Disproportionate Share Hospital Annual Reporting; *Use:* Section 1923(j)(i) of the Social Security Act (Act) requires States to submit an annual report that identifies each disproportionate share hospital (DSH) that received a DSH payment under the State's Medicaid program in the preceding fiscal year and the amount of DSH payments paid to that hospital in the same year along with other information that the Secretary determines necessary to ensure the appropriateness of DSH payments. The collected information will also satisfy the requirements under section 1923(a)(2)(D) of the Act; *Form Number:* CMS–R–266 (OMB#: 0938–0746); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 52; *Total Annual Responses:* 52; *Total Annual Hours:* 1,976. (For policy questions regarding this collection contact Rory Howe at 410–786–4878. 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 May 2, 2011 OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: March 25, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–7747 Filed 3–31–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Descriptive Study of Early Head Start (Early Head Start Family and Child Experiences Study; Baby FACES).

OMB No.: 0970–0354

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), anticipates continuing data collection for wave 4 of the parent interview, teacher child reports, care provider interviews and observations, direct child assessments, program director interviews, and family service tracking for the peri-natal cohort of the Descriptive Study of Early Head Start (Early Head Start Family and Child Experiences Study; Baby FACES). Data collection will continue for an additional 12 months beyond the current date of expiration (October 31, 2011).

This data collection is a part of Baby FACES, which is an important opportunity to provide a description of the characteristics, experiences, and outcomes of Early Head Start children and families, and Early Head Start Program services and delivery. All of the information obtained will be used to

help Early Head Start improve services to infants and toddlers and their families. Baby FACES uses a longitudinal age cohort study design that selected all children in the spring of 2009 that were within a four month peri-natal window. These children will be followed in the study until they are age 3 unless they leave the Early Head Start before reaching that age.

Materials for the wave 4 program visit data collection effort, previously submitted to OMB, covered peri-natal and age 1 cohort data collections. Data collection for the age 1 cohort will be completed by October 31, 2011. ACF anticipates collecting data for an additional 12 months in order to complete data collection for the peri-natal cohort.

Respondents: Program Directors, teachers and home visitors of sampled children, parents of sample children, sampled children.

Estimates of Annualized Burden Hours

As in the first three waves, the proposed data collection does not impose a financial burden on respondents. Respondents will not incur any expenses other than the time spent completing the interviews, reports and direct assessments.

The estimated annual burden for study respondents—parents, children, and program staff—is listed in the table below.

Response times are the same as reported in the initial OMB statement. The times were derived from previous studies using the same instruments with a similar population and confirmed with our population during earlier rounds of data collection. The number of respondents is based on the number of perinatal cohort members as of spring 2010 (our most recent round of data collection).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Parent Interview	135	1	1	135
Program Director Interview	89	1	1	89
Child Care Provider Interview	27	1	1	27
Home Visitor Interview	41	1	.75	31
Primary Caregiver/Home Visitor Child Rating	68	2.6	.25	44
Family Service Tracking	68	136	.167	1,544
Child Direct Assessment	135	1	1	135
Parent-Child Interaction	135	1	.25	34
Estimated Total Annual Burden Hours				2,039

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. *E-mail address: OPREinfocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 28, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–7667 Filed 3–31–11; 8:45 am]

BILLING CODE 4184–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Announcement of Award

AGENCY: Children's Bureau, ACYF, ACF, HHS.

ACTION: Announcement of the Award of a Single-Source Expansion Supplement Grant to the Regents of the University of Michigan, at Anne Arbor, MI, for the Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-ChildRep).

CFDA Number: 93.652.

Legislative Authority: Adoption Opportunities Program, section 203 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, (Pub. L. 95–266), as amended by the Keeping Children and Families Safe Act of 2003 (Pub. L. 108–36).

Amount of Award: $250,000.

Project Period: September 30, 2009 through September 29, 2014.

SUMMARY: The Administration for Children and Families (ACF), Children's Bureau (CB) announces the award of a single-source program expansion supplement grant to the Regents of the University of Michigan at Anne Arbor, MI, Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-ChildRep), to support additional and enhanced evaluation of the QIC-ChildRep research and demonstration projects.

The Regents of the University of Michigan was awarded a cooperative agreement in FY 2009 as the result of a competition to establish the QIC-ChildRep. The purpose of the QIC-ChildRep is to improve the quality of legal representation for children and youth in child welfare cases so that States and Tribes achieve the best safety, permanency and well-being outcomes for children and youth.

Under the cooperative agreement, the QIC-ChildRep develops knowledge about effective strategies to provide competent and effective representation for children and youth in child welfare cases, promotes the certification of

lawyers as specialist is child welfare, develops and implements child representation research and demonstration projects to promote evidence-based, evidence-informed practice improvements and effective child representation, establishes and maintains a national information sharing network to disseminate information on promising practices; evaluates the impact of selected projects implementing the child representation models on outcomes for children and families who have competent and effective child representation, and identifies barriers and recommends need changes in laws, policies, procedures and/or practice. The supplemental funds will be used to provide additional training, technical assistance, and support to each research and demonstration site to fully implement and maintain rigorous on-site and cross-site evaluation plans.

FOR FURTHER INFORMATION CONTACT: Gail Collins, Children's Bureau, 1250 Maryland Avenue, SW., Washington, DC 20047. Telephone: 202–205–8552, e-mail: *gail.collins@acf.hhs.gov.*

Dated: March 23, 2011.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2011–7648 Filed 3–31–11; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment on Proposed Funding Opportunity Announcement for Special Initiative Concerning the Assets for Independence Program

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Request for Public Comment.

C.F.D.A. Number: 93.602

Statutory Authority: The Assets for Independence Act (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998, as amended, Pub. L. 105–285, 42 U.S.C. 604 note) authorizes the Department of Health and Human Services to award grants to support Assets for Independence (AFI) projects and to research and evaluate the effectiveness of the AFI program and Individual Development Accounts (IDAs).

SUMMARY: In FY 2011, the Office of Community Services (OCS) will coordinate with the Administration on Native Americans (ANA) to implement the Native Asset Building Initiative, through which the two offices will support Tribes and Native organizations in planning and implementing comprehensive asset-building projects. The initiative will feature special grants through the Assets for Independence (AFI) program. These grants will be in addition to the annual AFI grants that OCS will award in FY 2011. In contrast to the annual awards, though, the eligibility criteria to be listed for these AFI grants in the "Native Asset Building Initiative" will vary from the annual AFI awards' eligibility criteria. This is because the criteria used to determine eligibility for these special initiative awards will be more consistent with those used to determine eligibility in the ANA grant program with which OCS is coordinating. Consequently, the eligibility for the special AFI grants will be limited to Native 501(c)(3) non-profits serving Native Americans; Federally recognized Tribal governments or Alaska Native Villages, as defined in the Alaska Native Claims Settlement Act, that are joint applicants with a 501(c)(3) Native non-profit organization; and Native non-profit organizations designated by the Secretary of the Treasury as Community Development Financial Institutions and Native non-profit credit unions designated by the National Credit Union Administration as low-income credit unions that demonstrate a collaborative relationship with a local community based organization whose activities are designed to address poverty and the needs of community members for economic independence and stability. Other entities will not be eligible for awards under this initiative, but will continue to be eligible for awards under the annual AFI funding opportunity announcement that was published issued for FY 2011 through FY 2013 on February 24, 2011 on *http://www.acf.hhs.gov/grants/open/foa/view/HHS-2011-ACF-OCS-EI-0137*.

It is estimated that OCS will award up to 10 AFI program grants under Native Asset Building Initiative, with overall funding of approximately $2,500,000 toward the initiative. It is anticipated that each recipient of these special AFI grants will also receive a separate ANA award for their project.

In addition to these special AFI awards, we estimate that $15,000,000 in grants will be awarded in FY 2011 under the annual AFI funding opportunity announcement published on February 24, 2011.

Proposed Funding Opportunity Announcement; Native Asset Building Initiative

In FY 2011, OCS will coordinate with the Administration on Native Americans (ANA) on the Native Asset Building Initiative to support Tribes and Native organizations in planning and implementing comprehensive asset building projects. OCS and ANA are providing this support through a joint funding opportunity and training and technical assistance.

The OCS component of the joint funding opportunity will feature special Assets for Independence (AFI) program grants the eligibility for which will be limited to entities that are eligible for ANA grants. Therefore, eligibility for the special AFI grants will be limited to Native 501(c)(3) non-profits serving Native Americans; Federally recognized Tribal governments or Alaska Native Villages, as defined in the Alaska Native Claims Settlement Act, that are joint applicants with a 501(c)(3) Native non-profit organization; Native non-profit organizations designated by the Secretary of the Treasury as Community Development Financial Institutions and Native non-profit credit unions designated by the National Credit Union Administration as low-income credit unions that demonstrate a collaborative relationship with a local community-based organization whose activities are designed to address poverty and the needs of community members for economic independence and stability. Other entities will not be eligible to submit applications for the AFI grants under the Native Asset Building Initiative. It is estimated that OCS will award up to ten AFI program grants under the initiative, with overall funding of approximately $2,500,000.

The ANA component of the Native Asset Building Initiative will feature a new funding opportunity through the Social and Economic Development Strategies (SEDS) program as well. The SEDS grants will provide funding for each project's operational and staffing costs, as well as support for financial literacy education training, capacity building, and other asset building activities.

The OCS AFI grants will provide funding to support the provision of Individual Development Accounts (IDA), or matched savings accounts, component of each selected applicant's comprehensive asset building project. The AFI grantees will also provide funding to support limited administrative costs related to the IDA component. AFI is a demonstration of the use of IDAs and related strategies

using an asset-based approach for assisting individuals and families with low incomes out of poverty. The program supports grantee organizations that provide financial literacy education and other training to families, along with access to IDAs. Every dollar in savings deposited into an IDA by a participant will be matched with AFI grant funds and non-federal funds. The program promotes savings and enables participants to acquire an economic asset that will appreciate over the long-term. Participants use their IDA savings to acquire a first home, capitalize a small business, or enroll in postsecondary education or training.

The Native Asset Building Initiative is designed to create synergies between the SEDS program and the AFI program, and to provide enhanced funding opportunities for Native communities. OCS and ANA anticipate that the Native Asset Building Initiative funding opportunity announcement will be published in April 2011. Upon publication, the Native Asset Building Initiative funding opportunity announcement will be made available at *http://www.Grants.gov* and at ACF Funding Opportunities *http://www.acf.hhs.gov/grants/index.html*.

Information on the planned announcement may now be accessed at the HHS Grants Forecast Web site at *http://www.acf.hhs.gov/hhsgrantsforecast/*.

OCS will publish a synopsis of comments received as a result of this notice, along with the agency's responses.

DATES: The deadline for receipt of comments is 30 days from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Comments in response to this notice should be addressed to James Gatz, Manager, Assets for Independence Program, Office of Community Services, 370 L'Enfant Promenade, SW., Mailstop Aerospace 5–West, Washington, DC 20447. Comments will be available for inspection by members of the public at the Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Jennifer Medina, Program Specialist, (866) 778–6037.

Dated: March 23, 2011.

Yolanda Butler,

Acting Director, Office of Community Services.

[FR Doc. 2011–7649 Filed 3–31–11; 8:45 am]

BILLING CODE 4184–26–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0283]

Guidance for Industry on Postmarketing Studies and Clinical Trials—Implementation of Section 505(o)(3) of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Postmarketing Studies and Clinical Trials—Implementation of Section 505(o)(3) of the Federal Food, Drug, and Cosmetic Act." The Food and Drug Administration Amendments Act of 2007 (FDAAA) added new provisions to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) authorizing FDA to require certain postmarketing studies and clinical trials for prescription drugs approved under the FD&C Act and biological products approved under the Public Health Service Act (the PHS Act). This guidance provides information on the implementation of the new provisions and a description of the types of postmarketing studies and clinical trials that will generally be required under the new legislation (postmarketing requirements (PMRs)) and the types that will generally be agreed-upon commitments (postmarketing commitments (PMCs)) because they do not meet the new statutory criteria for required postmarketing studies and clinical trials.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the office in processing your requests.

Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Nancy Dickinson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6226, Silver Spring, MD 20993–0002, 301–796–5400; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Postmarketing Studies and Clinical Trials—Implementation of Section 505(o)(3) of the Federal Food, Drug, and Cosmetic Act." In the past, FDA has used the term "PMC" to refer to studies (including clinical trials), conducted by an applicant after FDA has approved a drug for marketing or licensing, that were intended to further refine the safety, efficacy, or optimal use of a product, or to ensure consistency and reliability of product quality. These commitments were either agreed upon by FDA and the applicant or, in certain circumstances, required by FDA. Prior to the passage of FDAAA, FDA required PMCs in the following situations:

- Subpart H and subpart E accelerated approvals, which require postmarketing studies to demonstrate clinical benefit (21 CFR 314.510 and 601.41);
- Deferred pediatric studies, where studies are required under the Pediatric Research Equity Act (section 505, FD&C Act); and
- Animal Efficacy Rule approvals, where studies to demonstrate safety and efficacy in humans are required at the time of use (21 CFR 314.610(b)(1) and 601.91(b)(1)).

Title IX, section 901 of FDAAA (Pub. L. 110–85) amended the FD&C Act by adding new section 505(o) (21 U.S.C. 355(o)). Section 505(o)(3) of the FD&C Act authorizes FDA to require certain postmarketing studies or clinical trials for prescription drugs approved under section 505(b) of the FD&C Act and biological products approved under section 351 of the PHS Act (42 U.S.C. 262). Section 505(o)(3)(B) of the FD&C Act states that postmarketing studies and clinical trials may be required for one of three purposes:

- To assess a known serious risk related to the use of the drug;

• To assess signals of serious risk related to the use of the drug; or

• To identify an unexpected serious risk when available data indicates the potential for a serious risk.

This guidance provides information on the implementation of new section 505(o)(3) of the FD&C Act. The guidance also describes which types of postmarketing studies and clinical trials will be required (PMRs) under section 505(o)(3) and which types will be agreed-upon commitments because they do not meet the statutory criteria for required studies and trials (PMCs).

In the **Federal Register** of July 15, 2009 (74 FR 34358), FDA announced the availability of a draft guidance for industry entitled "Postmarketing Studies and Clinical Trials—Implementation of Section 505(o)(3) of the Federal Food, Drug, and Cosmetic Act." The notice gave interested persons the opportunity to comment by October 13, 2009. The draft guidance was revised in response to comments submitted to the docket requesting that the guidance clearly distinguish PMRs required under section 505(o)(3) of the FD&C Act from risk evaluation and mitigation strategies. The revisions also provide additional detail in the examples of PMRs and PMCs and clarify reporting requirements.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the implementation of section 901 of FDAAA on postmarketing studies and clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

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.

III. Paperwork Reduction Act of 1995

This guidance provides information on the implementation of section 901 of FDAAA. The collections of information requested in the draft guidance would be submitted under 21 CFR 314.80, 314.81, and 601.70. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and are approved under OMB control numbers 0910–0230, 0910–0001, and 0910–0338. Section VI of the guidance refers to procedures in the guidance entitled "Formal Dispute Resolution: Appeals Above the Division Level," which contains collections of information approved under OMB control number 0910–0430.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov.*

Dated: March 28, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–7707 Filed 3–31–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0066]

Molecular and Clinical Genetics Panel of the Medical Devices Advisory Committee; Notice of Meeting; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until May 2, 2011, the comment period for the notice announcing a meeting of the Molecular and Clinical Genetics Panel (the panel) of the Medical Devices Advisory Committee that published in the **Federal Register** of February 7, 2011 (76 FR 6623). In the notice, FDA requested public comment regarding the March 8 and 9, 2011, meeting of the panel to discuss and make recommendations on scientific issues concerning direct to consumer (DTC) genetic tests that make medical claims. FDA is reopening the comment period to update comments and to receive any new information.

DATES: Submit either electronic or written comments and information by May 2, 2011.

ADDRESSES: Submit electronic comments or information to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Mansfield, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 66, rm. 5676, Silver Spring, MD 20993–0002, 301–796–4664.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 7, 2011 (76 FR 6623), FDA published a notice announcing a meeting of the Molecular and Clinical Genetics Panel of the Medical Devices Advisory Committee, and the opening of a public docket to seek input and comments from interested stakeholders to discuss scientific issues concerning DTC tests. Interested persons were given until March 1, 2011, to submit comments.

II. Request for Comments

Following publication of the February 7, 2011, notice, FDA received requests to allow interested persons additional time to comment. The requesters asserted that the initial time period was insufficient to allow potential respondents to thoroughly evaluate and assess pertinent issues. The Agency has considered the requests and is reopening the comment period until May 2, 2011.

III. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding the meeting. 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: March 25, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–7708 Filed 3–31–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Best Pharmaceuticals for Children Act (BPCA) Priority List of Needs in Pediatric Therapeutics

AGENCY: National Institutes of Health, the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD).

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) hereby announces the Best Pharmaceuticals for Children Act (BPCA) Priority List of Needs in Pediatric Therapeutics for 2011. The BPCA seeks to improve the level of information—in scientific publications and on the label—about pharmaceuticals used to treat children. The BPCA requires that the NIH identify the drugs of highest priority for study in pediatric populations and publish a list of drugs/needs in pediatric therapeutics. This notice fulfills the requirement to publish that list.

SUPPLEMENTARY INFORMATION: For many decades, the pediatric medical community, the public health community, and government agencies have recognized multiple gaps in knowledge regarding the use of therapeutics in children, including the correct dose, the indication, the side effects, and the safety profile of pharmaceuticals in the long term. These gaps have frequently resulted in inadequate labeling for pediatric use and in widespread off-label use of prescription drugs in children. Off-label use of a drug results in a limited gain in scientific knowledge in dosing of a drug, changes in drug metabolism and response during growth and development, and ultimately the long-term effects. Contributing factors to the extensive off-label product use include limited access to patient populations for study, lack of knowledge related to the ethical conduct of clinical trials in children, the absence of sufficient evidence-based information about medication use in children, and a general lack of long-term safety data on the medications that are used. This limitation in information can increase a child's risk for adverse reactions.

The Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), the Food and Drug Administration (FDA), other Federal agencies, and various non-profit and commercial organizations have taken steps to address the knowledge gaps that exist in pediatric therapeutics. The BPCA seeks to improve the level of information in scientific publications and in the FDA-approved product label about pharmaceuticals used to treat children.

The 2002 BPCA Legislation

In November 1997, Congress enacted the Food and Drug Administration Modernization Act (FDAMA), which contains the provision establishing economic incentives in the form of exclusivity for conducting pediatric studies. Patents are granted by the U.S. Patent and Trademark Office and provide exclusive rights, such as intellectual property rights. Exclusivity, as it relates to manufacturers of drugs, is defined as exclusive marketing rights granted by the FDA upon approval of a drug (refer to the following FDA Web site for more details: *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/default.htm*). The initial BPCA legislation reauthorized an incentive program for on-patent drugs that meet certain criteria first authorized in the FDAMA. The BPCA also contains provisions for off-patent drugs and general support for pediatric product development. The legislation, as it applies to the NIH, authorizes a research program through the Department of Health and Human Services (HHS), with implementation through the NIH, specifically the NICHD. The NICHD is responsible for the development of (1) a priority list of needs in pediatric therapeutics, in consultation with the FDA and experts in pediatrics; (2) sponsorship of relevant pediatric clinical trials; and (3) submission of resulting data to FDA for pediatric labeling changes.

Since 2002, the NICHD has sought public comment and collaborated with other NIH Institutes and Centers and experts in pediatrics to identify drugs in need of further study and to prioritize needs in pediatric therapeutics. Under the 2002 BPCA legislation, prioritization was based on three major factors:

- Availability of information concerning the safe and effective use of a drug in the pediatric population and the need for additional information;
- Potential health benefits in the pediatric population resulting from new studies; and
- Possible need for reformulation of existing products.

The Updated BPCA Legislation of 2007

Title V of Public Law 110–85, the Best Pharmaceuticals for Children Act of 2007, was enacted on September 27, 2007, as part of the Food and Drug Administration Amendments Act of 2007. This legislation, which reauthorizes the BPCA (Section 409I of the Public Health Service Act), extends the 6-month patent exclusivity provision for currently on-patent drugs being studied for pediatric use, and also extends and expands the research program that the NIH established by the earlier law. The priority list procedure was revised to emphasize knowledge gaps in therapeutic areas in contrast to knowledge gaps about specific drug products. Specifically, the legislation authorizes that:

- The NIH, in consultation with the Commissioner of Food and Drugs and experts in pediatric research, develop and publish a priority list of needs in pediatric therapeutics, including drugs or indications that require study. This list is to be revised every three years.
- In developing and prioritizing the list, the Secretary is to consider the following available information:

(A) Therapeutic gaps in pediatrics that may include developmental pharmacology, pharmacogenetic determinants of drug response, metabolism of drugs and biologics in children, and pediatric clinical trials;

(B) Particular pediatric diseases, disorders, or conditions where more complete knowledge and testing of therapeutics, including drugs and biologics, may be beneficial in pediatric populations; and

(C) The adequacy of necessary infrastructure to conduct pediatric pharmacological research, including research networks and trained pediatric investigators.

Update on BPCA Prioritization

The BPCA requires that the NIH identify drugs of highest priority for study in pediatric populations. The first priority list consisting of off-patent drugs needing further study under the 2002 BPCA legislation was published in January 2003 in the **Federal Register** (FR Vol. 68, No. 13; Tuesday, January 21, 2003: 2789–2790). After the BPCA reauthorization in 2007, a revised priority list of needs in pediatric therapeutics was published in April 2009 (FR Vol. 74, No. 70; Tuesday, April 14, 2009: 17203–17205) and revised in September 2009. The latest version of the list from the September 2009 revision can be found at this Web site: *http://bpca.nichd.nih.gov/about/process/upload/2009-Summary-091509-1-rev.pdf.* NIH is required by the BPCA to update the priority list every 3 years. This notice serves as an update to the BPCA priority list of needs in pediatric therapeutics.

In the transition from prioritizing drugs to prioritizing therapeutic needs, several changes have been implemented

over the last year in refining the prioritization process. These include the need for more preliminary information on candidate drugs (for example, information on frequency of use and frequency of condition) as well as expert input, a better approach for mass outreach, enhancement of NIH interagency collaborations, and improvement in the overall prioritization process.

The revised process includes:

- A Well-defined process, using a systematic approach with clear objectives and outcomes;
- Well-defined objective criteria that are mutually exclusive and of a manageable number;
- A dynamic process, including transparency, stakeholder input, and leadership; and
- Expert involvement to inform and contribute to the process.

For 2010, NIH solicited nominations for the BPCA Priority List of Needs in Pediatric Therapeutics through a "Request for Information" (RFI) announcement as part of NIH's authority and responsibility to establish the program for pediatric drug testing and development outlined in the BPCA legislation. The BPCA Priority List consists of key therapeutic needs in the medical treatment of children and adolescents. The list is organized by Therapeutic Area, which can be a group of conditions, a subgroup of the population, or a setting of care. Each calendar year, a few Therapeutic Areas are selected for discussion and further prioritization. Below is a summary of the revised BPCA prioritization process:

- In early 2010, the RFI was issued to solicit nominations for future studies of pediatric therapeutics under the BPCA.
- The Obstetric and Pediatric Pharmacology Branch of the NICHD received 107 nominations, 67 of which met the criteria for review.
- All nominations were reviewed and evaluated on six key criteria, as follows:
- Relevance to BPCA Mission and Goals
- No disqualifying ethical concerns
- Evidence: consideration of the level of evidence available and current gaps
- Impact: potential effect on children, society, and delivery of care
- Population: consideration of the different populations that may benefit from the research
- Feasibility: consideration of the resources available to conduct the study
- Twenty-two volunteer health professional evaluators scored the 67 nominations according to evidence, impact, and the pediatric population affected. Each nomination was reviewed by a panel of three evaluators.
- Therapeutic Area working groups (several Therapeutic Areas are determined annually) were developed and met through the 2010 year to discuss the gaps in knowledge in the therapeutic approaches to diseases in gastroenterology, endocrinology, and neurology.
- Minutes of all working group meetings conducted under the BPCA can be found on the BPCA Web site, *http://bpca.nichd.nih.gov.*
- As a final step in the process, the NICHD, with input from the FDA, ranked the nominations based on the evaluators' scores, quality and quantity of existing studies, and feasibility of the proposed study. The result was a tiered list of nominations considered for listing. Tier One represents the highest percentage of scores: nominations of interest to the NICHD for prioritization. Tier Two represents the average percentage of scores: nominations of possible interest to the NICHD at a later time. Tier Three represents the lowest percentage of scores: Nominations of least interest to the NICHD at this time for prioritization.

The NICHD sponsored the annual BPCA prioritization meeting, held November 9–10, 2010, with stakeholders from the NIH, the FDA, the American Academy of Pediatrics, other pediatric organizations and societies, and patient advocates. The meeting allowed the NICHD to review the present progress from ongoing research and to discuss the proposed Therapeutic Areas from the 2010 nominations to be prioritized for future study under the BPCA and added to the existing BPCA priority list.

Below is an updated list of Therapeutic Areas and drugs that have been prioritized for study since the inception of the BPCA. It includes new areas of prioritization from Tier One nominations of the 2010 outreach and a summary of the NICHD's plans and progress in all these areas.

Priority List of Needs in Pediatric Therapeutics 2011

In accordance with the BPCA legislation, the list outlines priority needs in pediatric therapeutics for multiple Therapeutic Areas listed below. The priority list can be found on the BPCA Web site at the following address: *http://bpca.nichd.nih.gov*

- *Table 1: Infectious Disease Priorities*
- *Table 2: Cardiovascular Disease Priorities*
- *Table 3: Respiratory Disease Priorities*
- *Table 4: Intensive Care Priorities*
- *Table 5: Bio-defense Research Priorities*
- *Table 6: Pediatric Cancer Priorities*
- *Table 7: Psychiatric Disorder Priorities*
- *Table 8: Neurological Disease Priorities*
- *Table 9: Neonatal Research Priorities*
- *Table 10: Adolescent Research Priorities*
- *Table 11: Hematologic Disease Priorities*
- *Table 12: Endocrine Disease Priorities and Diseases with Limited Alternative Therapies*
- *Table 13: Dermatologic Disease Priorities*
- *Table 14: Gastrointestinal Disease Priorities*
- *Table 15: Renal Disease Priorities*
- *Table 16: Rheumatologic Disease Priorities*
- *Table 17: Special Considerations*

FOR FURTHER INFORMATION CONTACT: Dr. Perdita Taylor-Zapata via e-mail at *taylorpe@mail.nih.gov* or by telephone at 301–496–9584 (not a toll-free number).

Dated: March 24, 2011.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2011–7673 Filed 3–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell Signaling and Guidance.

Date: April 7–11, 2011.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joanne T Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: March 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7818 Filed 3–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Loan Repayment Program.

Date: April 25–29, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Nancy Lewis Ernst, PhD, Scientific Review Official, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–7383, *nancy.ernst@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Targeted Clinical Research to Address Select Viral Infections.

Date: April 25–26, 2011.

Time: 8 p.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Eleazar Cohen, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 6700 B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301–435–3564, *ec17w@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Immune Response to Infection Meeting I.

Date: April 25–26, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Immune Response to Infection Meeting II.

Date: April 26, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7817 Filed 3–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "HIV Vaccine Design".

Date: April 27, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Raymond R. Schleef, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–3679, *schleefrr@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7816 Filed 3–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R25 Minority Panel.

Date: April 19, 2011.

Time: 3:15 p.m. to 7:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Officer, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center, Room 3203, Bethesda, MD 20892–9529, 301–496–5388, *wiethorp@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7819 Filed 3–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405: (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave., NW., 4th Floor, Washington, DC 20006: (202) 208–5399; *Navy:* Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374: (202) 685–9305; (These are not toll-free numbers).

Dated: March 24, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 04/01/2011

Suitable/Available Properties

Building

Alabama

Single Family House
NOLF
Evergreen AL 36401
Landholding Agency: Navy
Property Number: 77201110014
Status: Excess
Comments: Off-site removal only, 2,500 sq. ft., recent use: residential, possibility of asbestos and lead-based paint

Unsuitable Properties

Building

Arkansas

Tracts 11–104 and 16–116
Nat'l Park Service
Marble Falls AR 72649
Landholding Agency: Interior
Property Number: 61201110004
Status: Excess
Reasons: Extensive deterioration

Hawaii

5 Bldgs.
Marine Corps. Base
Kaneohe HI 96863
Landholding Agency: Navy
Property Number: 77201110012
Status: Excess
Directions: 14, 15, 17,151,612
Reasons: Extensive deterioration

Idaho

4 Bldgs.
Idaho National Laboratory
1955 N. Fremont Ave
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41201110004
Status: Unutilized
Directions: TRA–629, 631, 669, 673
Reasons: Secured Area, Extensive deterioration

TAN–664
Idaho Nat'l Lab
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41201110005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Unsuitable Properties

Building

Illinois

Bldg. 76
Naval Station
Great Lakes IL
Landholding Agency: Navy
Property Number: 77201110013
Status: Unutilized
Reasons: Extensive deterioration

Texas

4 Bldgs.
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41201110003
Status: Unutilized
Directions: 04–02E, 09–111, 11–015A, 11–018
Reasons: Secured Area, Extensive deterioration

Washington

Tracts 10–101 and 15–115
Olympic Nat'l Park
Lake Crescent WA 98362
Landholding Agency: Interior
Property Number: 61201110005
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Land

Maryland

Brandywine DRMO Site
14810 Brandywine Rd.
Brandywine MD 20613
Landholding Agency: GSA
Property Number: 54201110013
Status: Unutilized
GSA Number: NCR–D–MR–1109–1
Comments: Previously reported as "unsuitable"; property number 18999010263.
Reasons: Contamination

[FR Doc. 2011–7407 Filed 3–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Ocean Energy Safety Advisory Committee; Notice of Meeting

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of meeting.

SUMMARY: The Ocean Energy Safety Advisory Committee will meet at the U.S. Access Board in Washington, DC.

DATES: Monday, April 18, 2011, 8:30 a.m. to 5 p.m., EDT.

ADDRESSES: U.S. Access Board, 1331 F Street, NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Brad J. Blythe at the Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170–4187. He can be reached by telephone at (703) 787–1636 or by electronic mail at *brad.blythe@boemre.gov.*

SUPPLEMENTARY INFORMATION: The Ocean Energy Safety Advisory Committee consists of representatives from industry, Federal Government agencies, non-governmental organizations, and the academic community. It provides policy advice to the Secretary of the Interior through the Director of BOEMRE on matters relating to ocean energy safety, including, but not limited to drilling and workplace safety, well intervention and containment, and oil spill response.

The agenda for Monday, April 18, will address the scope and role of the Committee and begin framing the Committee's action plan for the next 12 to 24 months. The meeting will include an expert panel on the findings and recommendations of recent investigations of U.S. offshore drilling regulation.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis. Members of the public will have the opportunity to comment on a first-come-first-served basis during the time allotted for public comment and may submit written comments to the Ocean Energy Safety Advisory Committee during the meeting or by email to Dr. Blythe at *brad.blythe@boemre.gov.*

Minutes of the Ocean Energy Safety Advisory Committee meeting will be available for public inspection on the Committee's Web site at: *http://www.boemre.gov/mmab/EnergySafety.htm.*

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: March 28, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy, Management, Regulation and Enforcement.

[FR Doc. 2011–7650 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–FHC–2011–N040; 71490–1351–0000–L5–FY11]

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application and proposed renewal of incidental harassment authorization; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from the Alaska Department of Transportation and Public Facilities (ADOT&PF) and the Aleutians East Borough for renewal of authorization to take small numbers of marine mammals by harassment incidental to airport construction on Akun Island and hovercraft operation between Akun Island and Akutan, Alaska. In accordance with provisions of the Marine Mammal Protection Act of 1972 (MMPA), as amended, we request comments on our proposed authorization for the applicant to incidentally take, by harassment, small numbers of northern sea otters for a period of 1 year, beginning July 1, 2011. We anticipate no take by injury or death and include none in this proposed authorization, which would be for take by harassment only.

DATES: Comments and information must be received by May 2, 2011.

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

1. By mail to: Douglas Burn, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.
2. By fax to: 907–786–3816.
3. By electronic mail (e-mail) to: *R7_MMM_Comment@FWS.gov*. Please include your name and return address in your message. If you do not receive a confirmation from the system that we have received your message, contact us directly at the telephone numbers above.
4. By hand-delivery to the above address.

FOR FURTHER INFORMATION CONTACT: To request copies of the application, the list of references used in this notice, and other supporting materials, contact Douglas Burn at the address in **ADDRESSES**, by telephone at 907–786–3807 or 1–800–362–5148, or by e-mail at *Douglas_Burn@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA, as amended (16 U.S.C. 1371 (a)(5)(A) and (D)), authorize the Secretary of the Interior 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, provided that we make certain findings and either issue regulations or, if the taking is limited to harassment, provide a notice of a proposed authorization to the public for review and comment.

We may grant authorization to incidentally take marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. As part of the authorization process, we prescribe permissible methods of taking and other means of affecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

The term "take," as defined by the MMPA, means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, means "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [the MMPA calls this 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 [the MMPA calls this Level B harassment]."

The terms "small numbers," "negligible impact," and "unmitigable adverse impact" are defined in 50 CFR 18.27, the Service's regulations governing take of small numbers of marine mammals incidental to specified activities. "Small numbers" is defined as "a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock." "Negligible impact" is defined 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." "Unmitigable adverse impact" is defined 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."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals where the take will be limited to harassment. Section 101(a)(5)(D)(iii) establishes a 45-day time limit for Service 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, we must either issue or deny issuance of the authorization. We refer to these authorizations as Incidental Harassment Authorizations (IHAs).

Previous Federal Action

On July 9, 2008, we received a joint application from the Alaska Department of Transportation and Public Facilities and the Aleutians East Borough (Applicants) for the taking by harassment of northern sea otters (*Enhydralutriskenyoni*) incidental to the Akutan Airport, Alaska, Airport Construction and Hovercraft Operation (Project). The request was published in the **Federal Register** on August 27, 2008 (73 FR 50634). On November 10, 2008, the Service issued IHAs to the Applicants authorizing Level B harassment of northern sea otters for a period of 1 year. The term of the IHAs commenced on May 1, 2009, and expired April 30, 2010. Due to funding constraints, no construction activities or hovercraft operations were conducted during this period of time. On January25, 2010, we received a joint application from the Applicants to reissue the existing IHAs for an additional 1-year period. The request was published in the **Federal Register** on June 8, 2010 (75 FR 32497). On July 14, 2010, the Service reissued the existing IHAs authorizing Level B harassment of northern sea otters for a period of 1 year, commencing July 1, 2010, and expiring June 30, 2011. Construction activities are expected to commence in March 2011, before the current IHAs expire.

Summary of Request

On February 11, 2011,we received a joint application from the Alaska Department of Transportation and Public Facilities and the Aleutians East Borough (Applicants) to reissue the existing authorizations for an additional 1-year period for the taking by harassment of northern sea otters incidental to the Project. The proposed activities described in this joint application request have been modified since the previous IHAs were issued in 2008 and 2010. However, impacts to northern sea otters from the modified Project will not differ significantly from those analyzed in the Biological Assessment (HDR 2006) and Biological Opinion (USFWS 2007). Therefore, if issued, the IHA will have only minor changes from the previous IHAs.

A detailed description of the initially proposed action and an evaluation of alternatives considered are contained in a Final Environmental Assessment (FEA) prepared by the Applicants for the Federal Aviation Administration (FAA), and a Finding of No Significant Impact/Record of Decision (FONSI/ROD) was issued in December 2007 (73 FR 4040; January 23, 2008). A Biological Assessment (BA) of the northern sea otter was received by the Service in December 2006, and a Biological Opinion (BiOp) for the proposed Akutan Airport Project was issued by the Service in May 2007. The proposed action has been subsequently modified as described in a Supplemental EA (SEA) prepared by the Applicants for

the FAA. In addition, the significance of those modifications on species considered in the BiOp that are listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*) has also been analyzed in an Addendum to the BA. Further modifications are proposed and analyzed in a second SEA that is currently under preparation by ADOT&PF. Section 7 consultation with the Service was reinitiated with the Applicants on January 14, 2011.

Under the proposed modified action, the Applicants would construct a new airport on the southwestern portion of Akun Island, which would serve the community of Akutan, approximately 7 miles to the west. Access to the Akun airport location would be provided by hovercraft from the community of Akutan to Surf Beach, which offers a protected landing area. Marine service by hovercraft between the community of Akutan and Surf Bay on Akun Island would satisfy passenger comfort and weather operability goals. When not in use, the hovercraft would be stored in a building at the head of Akutan Harbor. Staff would access the hovercraft storage area at the head of the harbor by traveling in a skiff. A 1,600-foot-long road would connect the hovercraft landing pad on Surf Beach to the runway located on the benchland above the beach. A diesel bus would be used to transport passengers between the hovercraft and aircraft. The bus would be fueled onsite and stored at the airport when not in use.

Description of the Activity

Akutan Airport, Alaska—Airport Construction and Hovercraft Operation

a. Timing of Construction and Hovercraft Operation

Construction of the airport and related transportation of construction materials would commence in March 2011 and continue until the fourth quarter of 2012. Hovercraft testing could commence as early as the second quarter of 2011, with sustained operations commencing in the fourth quarter of 2012, after completion of construction.

b. Geographic Location of Action

The community of Akutan is located on a small bay on Akutan Island in the eastern region of the Aleutian Islands (73 FR 50636). The city of Akutan has a population of about 741. The community is located 35 miles east of Unalaska and 766 miles southwest of Anchorage.The proposed location for the new airport to serve the community of Akutan is on the southwestern portion of Akun Island, approximately 7 miles east of the community.The hovercraft would transit between the community of Akutan and a landing site on the shore of Surf Bay on Akun Island.

Summary of Proposed Modifications to Project

As stated in the FEA, the existing amphibious seaplane ramp at Akutan would serve as the hovercraft terminal for loading and unloading passengers in the community. However, due to operational limitations of the hovercraft vessel, improvements to the ramp are needed to accommodate the hovercraft. As proposed, the existing 40-foot-wide by 43-foot-long seaplane ramp would be extended to be approximately 100 feet wide and 112 feet long and would impact approximately 0.23 acre of intertidal/sub-tidal area.

The proposed modification to the runway alignment on Akun Island is a counterclockwise rotation of approximately 20 degrees from a heading of 110° to 290° to a heading of 90° to 270°. This modification would increase aircraft safety and reduce impacts to wetlands, uplands, and fish habitat. A preferred temporary access route for use during construction is proposed approximately 1,000 feet north of the approved site of the hovercraft landing pad on Akun Island. The beach would be accessed daily using landing craft or shallow draft barges and a temporary floating dock during the construction seasons. Supplies, equipment, and personnel would be routed from the proposed beach access site to the hovercraft landing in order to access the airport construction area via the previously approved access road. The routing would occur below the driftwood line and above the low-tide line on compacted sand. A temporary construction camp, designed to support up to 60 construction personnel, is proposed in an area designated for a temporary construction easement in the SEA. A temporary fuel storage facility will be located on the hovercraft landing pad near Surf Beach, and will meet all requirements as regulated by the Environmental Protection Agency and the Alaska Department of Environmental Conservation. Finally, an armor rock berm with a buried toe is proposed for the south side of Stream #1 to protect the new hovercraft maneuvering pad and ramp from stream bed migration to the south.

The proposed modifications in project design would not alter the nature, extent, or effects of construction or hovercraft operations on sea otters from those previously reviewed and authorized under the existing IHA.

Description of Habitat and Marine Mammals Affected by the Activity

Three monthly surveys for sea otters were conducted in winter (January–March) 2006 as part of the field investigations for the Akun Alternative by HDR Alaska, Inc. in Akutan Harbor, Akun Strait, and Surf Bay along the proposed Akun airport hovercraft route. Numbers of sea otters on surveyed transects were highest in January (22), with fewer in February (17), and by March, only 7 otters were observed. Preferred habitat appeared to include protected areas in Akutan Harbor near the community of Akutan and along near shore habitats at Akun and Green islands. Most of the otters sighted were individuals, and only one female with a pup was observed during the winter surveys. A detailed description of the habitat, status, distribution, and seasonal distribution of northern sea otters is contained in the EA, the Biological Assessment for the proposed IHA, and the Biological Opinion (FWS 2007) for the proposed Akutan Airport Project.

Since issuance of the IHAs in November 2008 and July 2010, additional sea otter distribution and abundance information has become available (HDR 2010). Sea otter distribution and abundance were similar during the years 2004, 2006, 2008, and 2010. Surveys in 2010 indicate that up to 45 otters may be present at the head of Akutan Harbor. They also indicate that the area around Green Island and the associated offshore rocks and islets, on the eastern edge of Akun Strait, supports up to 45 sea otters at a time. These data suggest that disturbances in these areas should be minimized during construction and hovercraft operations.

Status and Distribution of Affected Species

In North America, the northern sea otter is found along the coasts of Washington, British Columbia, and Alaska. Present distribution extends from the north coast of Washington State into the north Vancouver Island area of British Columbia. In Alaska, northern sea otters occur in the coastal waters from southeast Alaska to the Aleutian Island chain (Riedman and Estes 1990). Currently there are three population stocks of northern sea otters in Alaska. Since the mid-1980s, the southwest population stock has undergone an overall 55–67 percent decline (Doroff *et al.* 2003; Burn *et al.* 2003; Burn and Doroff 2005; Estes *et al.*

2005; USFWS 2005). The animals found in the Aleutian Islands have experienced the greatest declines. More specifically, the population in the Rat Island group, located in the central Aleutian Island chain, declined by about 94 percent; aerial survey counts of the Rat Island group decreased from 270 in 1959 to 11 in 2000 (Kenyon 1969; Doroff *et al.* 2003). The reasons for this decline are not well understood and are under investigation. Consequently, on August 9, 2005, the southwestern Alaska distinct population segment (DPS) of northern sea otters was listed as threatened under the ESA (70 FR 46366). Critical habitat for this species was designated on October 8, 2009, and became effective on November 9, 2009 (74 FR 51988).

Potential Impacts of the Airport Construction and Hovercraft Operation on Sea Otters

The proposed activities have the potential to disturb resting and foraging activities of sea otters, particularly in waters that are protected in the near shore habitat, which is used for resting, pup rearing, and foraging. The incremental effects of the hovercraft operation will be minimal in Akutan Harbor, which presently has considerable amounts of vessel traffic. In contrast, Surf Bay has relatively little vessel traffic. This fact may explain why surveys indicate that the majority of sea otters observed along the hovercraft route were in the proximity of Surf Bay. As a result, we expect most of the impacts from incidental harassment to occur in the Surf Bay area.

The responses of marine mammals to airport construction and hovercraft operations vary among species. Sea otters have not been reported as particularly sensitive to sound and/or movement disturbance, especially in comparison to other marine mammals such as pinnipeds (U.S. Air Force and USFWS 1988; Efroymson and Suter 2001). However, observations of sea otters indicate their responses to disturbance are highly variable (A. Doroff, USFWS, pers. comm.). If any sea otters are present during project operations, some of them may be temporarily disturbed by noise or hovercraft operating in the area. This could result in an otter entering the water from land and/or diving, which they do as part of their normal behavior pattern. The short-term displacement of any hauled-out animals that is likely to occur as a result of project noise and personnel is not anticipated to affect the overall fitness of any individual animal.

Potential Effects on Habitat

Hovercraft landings would be constructed primarily in areas above the mean high-tide line to minimize adverse effects on northern sea otters and their habitat. Surf Beach landing site construction will impact about 0.4 intertidal acres and about 0.01 subtidal acres. Construction at the head of Akutan Harbor will impact about 0.1 intertidal acres and about 0.6 subtidal acres. Expansion of the existing ramp at Akutan will impact about 0.23 acres of intertidal and subtidal area.

Potential Impacts on Subsistence Needs

In the Aleutian Islands, rural residents use a variety of plant and animal resources for subsistence purposes. The MMPA provides for a subsistence take of marine mammals by Alaska Natives. Although northern sea otters are harvested for subsistence purposes in the Aleutians, information from the Service's marine mammal Marking, Tagging, and Reporting Program (MTRP) indicates that on average, less than one sea otter per year is harvested from Akutan. We do not anticipate that the project described in this application would have any adverse effect on subsistence uses or needs.

Mitigation Measures

As described in correspondence between FAA and the Service (FAA 2007; FWS 2007), the Applicants would be required to implement the following measures to avoid, minimize, and mitigate the effects of the proposed action on northern sea otters:

a. A Hovercraft Shall Be Used To Transport Passengers To and From the Airport

As described in the Biological Assessment, hovercrafts produce less wake and less underwater noise than other marine vessels. Peer-reviewed scientific literature concludes that a hovercraft is considerably quieter underwater than a similar-sized conventional vessel, and that hovercraft may be an attractive alternative to conventional vessels if underwater sounds cause concerns. In-air sound may constitute a source of disturbance for sea otters.

b. The Hovercraft Landings Shall Be Located To Minimize Impacts to Intertidal and Subtidal Areas

Construction of hovercraft landings shall occur primarily in areas away from intertidal and subtidal areas to avoid adverse effects on northern sea otters and their habitat. Construction of the Surf Beach landing site would impact about 0.4 intertidal acres and about 0.01 subtidal acres. Construction at the head of Akutan Harbor would impact about 0.1 intertidal acres and about 0.6 subtidal acres. Expansion of the existing ramp at Akutan will impact about 0.23 acres of intertidal and subtidal area. Such construction is likely to be more environmentally sensitive than construction of fixed, in-water docks or other related facilities.

c. No Dredging or Pile Driving Is Anticipated During the Construction of the Hovercraft Landings

Both dredging and pile driving have the potential to harass northern sea otters due to habitat or noise disturbance. We anticipate that the use of a hovercraft would avoid the need to construct in-water facilities such as moorings, piers, or docks that could require dredging or pile driving.

d. The Hovercraft Shall Be Operated According to a Route Operational Manual, Which Shall Require Avoidance of Sensitive Areas and Species

The Applicants will be required to develop a Route Operational Manual in consultation with the Service. The purpose of the Route Operational Manual is to develop hovercraft routes and operational procedures that avoid and minimize the likelihood of northern sea otter disturbance. As described below, the Applicants propose to develop an initial Route Operational Manual to ensure initial hovercraft operations avoid adverse effects to listed northern sea otters and other protected marine mammals. The Route Operational Manual would require Service approval prior to initiation of hovercraft operation, and operator compliance with the Route Operational Manual will be required as a condition of airport design approval and Clean Water Act 404 permit issuance.

e. All Fueling and Hovercraft Maintenance Activities Shall Be Conducted to the Maximum Extent Feasible at Least 100 Feet Away From Akutan Harbor and Surf Bay, and Fuel Storage Shall Be at Least 100 Feet Away From Akutan Harbor and Surf Bay

Northern sea otters are susceptible to the adverse effects of oiling due to fuel spills because otters depend on their insulation of dense fur to keep warm. Otters likewise may ingest oil during grooming and feeding. To address this issue, the Applicants shall conduct all fueling activities at the maximum distance feasible (i.e., at least 100 feet away from Akutan Harbor and Surf Bay). Fuel storage shall also occur at least 100 feet away from these locations.

The Applicants shall comply with all applicable Federal and State fuel handling and storage requirements, further reducing the risk that any spill reaches sensitive northern sea otter habitat.

f. To Prevent Contamination, Hovercraft Maintenance Activities Shall Occur in the Hovercraft Storage Building or on the Hovercraft Landing

As discussed above, sea otters are susceptible to the adverse effects of oiling due to fuel spills because otters depend on their insulation of dense fur to keep warm. Otters likewise may ingest oil or other compounds during grooming or feeding. To address the risk of spills or contamination associated with hovercraft maintenance, the Applicants shall conduct all maintenance activities either on hovercraft landing areas, above intertidal or subtidal areas, or in the hovercraft storage building. The Applicants shall comply with all applicable Federal and State hazardous materials handling and storage requirements, further reducing the risk that any contamination reaches sensitive northern sea otter habitat.

g. Completion of an Initial Route Operational Manual Shall Be Expedited

The Applicants shall expedite completion of an initial Route Operational Manual, which shall be developed in consultation with the Service prior to initial operation of the hovercraft. The Route Operational Manual will outline specific, detailed procedures to avoid and minimize impacts to sea otters. The Route Operational Manual shall identify hovercraft routes and provide a clearly written protocol that all hovercraft operators will be required to follow during initial hovercraft operations. The Applicants shall submit a draft initial Route Operation Manual to the Service for review and approval at least 30 days prior to commencing hovercraft trials in 2011.

During Route Operational Manual development, the Applicants will consult with the hovercraft manufacturer to ensure that hovercraft operations occur in the most environmentally sensitive manner possible. Through these discussions, the parties and the manufacturer may identify additional, cost-effective measures to further reduce vessel noise.

h. Northern Sea Otter Avoidance Areas Shall Be Established

The Applicants shall identify northern sea otter avoidance areas in consultation with the Service. These avoidance areas will serve to help delineate areas of likely northern sea otter occurrence to allow for their avoidance. Avoidance areas will be established through the use of preconstruction survey data collected by the Applicants from 2006 to 2010.

i. Hovercraft Speed and Course Shall Be Altered

If a northern sea otter is observed within a set distance (e.g., a minimum of 1,200 feet) of the hovercraft, and based on the otter's position and the otter's relative course of travel, the otter is likely to approach the hovercraft, the hovercraft's speed or course shall, when practicable and safe, be changed to avoid impacts to the species. Northern sea otter activities and movements relative to the hovercraft will be closely monitored to ensure that an animal does not (1) travel within a set distance (e.g., a minimum of 600 feet) of a departing hovercraft or (2) travel within a set distance (e.g., a minimum of 300 feet) of an approaching hovercraft (the "potential disturbance area" or "PDA"). If either of these events occurs, further mitigation measures must be taken (e.g., further course alterations or power down). The actual distances will be determined based on consultation with the Service during development of the Route Operation Manual.

j. Power-Down Procedures Shall Be Used

A power down involves decreasing the speed of the hovercraft to avoid interactions with, and potential disturbance of, northern sea otters. If a northern sea otter is detected (1) within a set distance (e.g., a minimum of 600 feet) of a departing hovercraft or (2) within a set distance (e.g., a minimum of 300 feet) of an approaching hovercraft, the vessel's course shall be altered or speed shall, consistent with applicable design and operational requirements, be decreased to the slowest practicable speed before the animal enters the PDA. Power-down procedures shall be developed in consultation with the hovercraft manufacturer and the Service to ensure procedures are safe and within the operating parameters of the hovercraft.The actual distances will be determined based on consultation with the Service during development of the Route Operation Manual.

k. Ramp-Up Procedures Shall Be Used

"Ramp-up" procedures shall be implemented when starting up the hovercraft, to provide additional protection to northern sea otters located near hovercraft landing areas. These procedures will allow individual animals to vacate the area to reduce the risk of injury, and to further reduce the risk of potentially startling sea otters with a sudden intensive sound. Ramp-up shall occur such that the sound associated with hovercraft operations will increase at a rate of about 6 dB per 5 minutes. The Applicants shall confer with the hovercraft manufacturer to develop ramp-up procedures consistent with this guideline.

l. Low-Light Operations Shall Be Used

The Applicants shall work with theService to develop night-time or low-light operating procedures to avoid and minimize impacts to northern sea otters and other species.

Findings

We propose the following findings regarding this action:

Small Numbers Determination and Estimated Take by Incidental Harassment

For small take analysis, the statute and legislative history do not expressly require a specific type of numbers analysis, leaving the determination of "small" to the agency's discretion. Factors considered in our small numbers determination include:

(1) *The number of northern sea otters inhabiting the waters in the impact area is expected to be small relative to the size of the southwest Alaska population stock.* Skiff-based surveys conducted in 2006 recorded up to 22 otters in proximity to the proposed hovercraft route. The current estimate for the size of the southwest Alaska population stock is approximately 48,000 individuals (USFWS 2008). The number of northern sea otters that could potentially be taken by harassment in association with the proposed activity is less than 0.05 percent of the estimated population size.

(2) *The area where the activity would occur is small relative to the range of the southwest Alaska population stock of sea otters.* Surf Bay on Akun Island is approximately 7 km in length. The southwest Alaska population stock ranges from Attu Island in the west to lower Cook Inlet in the east, a distance of more than 2,700 km. Therefore, Surf Bay comprises less than 0.3 percent of the total range in linear km of the southwest Alaska population stock of the northern sea otter.

(3) *The area where the activity would occur will impact a relatively small fraction of the habitat of the southwest Alaska population stock of sea otters.* As sea otters typically inhabit nearshore marine areas, shoreline length is a

readily available metric that can be used to quantify sea otter habitat. The total length of shoreline within the range of the southwest Alaska stock of northern sea otters is approximately 19,531 km. By comparison, the shoreline of Surf Bay is approximately 7 km in length, which is less than 0.04 percent of the total available habitat.

(4) *Monitoring requirements and mitigation measures are expected to significantly limit the number of incidental takes.* Monitoring information collected during initial hovercraft operations will provide the Service and the Applicants with more current information about sea otter distribution and abundance at Surf Bay on Akun Island. In the event that larger numbers of sea otters than have previously been observed are encountered at consistent locations, the Route Operational Manual will be required to be revised to minimize incidents of harassment.

Negligible Impact

The Service finds that any incidental take by harassment that is reasonably likely to result from the proposed project would not adversely affect the southwest Alaska stock of northern sea otters through effects on rates of recruitment or survival, and would, therefore, have no more than a negligible impact on the stock. In making this finding, we considered the best available scientific information, including: (1) The biological and behavioral characteristics of the species; (2) the most recent information on distribution and abundance of sea otters within the area of the proposed activity; (3) the potential sources of disturbance during the proposed activity; and (4) the potential response of northern sea otters to disturbance.

The mitigation measures outlined above are intended to minimize the number of sea otters that may be disturbed by the proposed activity. Any impacts to individuals are expected to be limited to Level B harassment of short-term duration. Response of sea otters to disturbance would most likely be common behaviors such as diving and/or swimming away from the source of the disturbance. No take by injury or death is anticipated. We find that the anticipated harassment caused by the proposed activities is not expected to adversely affect the species or stock through effects on annual rate of recruitment or survival.

Our finding of negligible impact applies to incidental take associated with the proposed activity as mitigated through this authorization process. This authorization establishes monitoring and reporting requirements to evaluate the potential impacts of the authorized activities, as well as mitigation measures designed to minimize interactions with, and impacts to, northern sea otters.

Impact on Subsistence

We find that the anticipated harassment caused by the project would not have an unmitigable adverse impact on the availability of northern sea otters for taking for subsistence uses during the period of the activity. In making this finding, we considered the timing and location of the project and subsistence harvest patterns, as reported through the MTRP, in the proposed project area.

Marine Mammal Monitoring

The applicant would be required to conduct marine mammal monitoring during the Airport Construction and Hovercraft Operation, in order to implement the mitigation measures that require real-time monitoring, and to satisfy monitoring required under the MMPA. Project personnel would be required to record information regarding location and behavior of all sea otters observed during operations. When conditions permit, information regarding age (pup, adult) and any tagged animals would also be required to be recorded. The Applicants also propose to form an Akutan marine mammal working group in coordination with the City of Akutan, the Aleutians East Borough, the Service, and NMFS. This working group would consist of representatives from affected native organizations, the City of Akutan, the FAA, and the Services. The working group would provide a forum to discuss hovercraft monitoring results and other issues pertaining to airport operations and northern sea otter conservation.

The working group shall discuss, among other things: (1) Any proposed changes in hovercraft operations to provide both the FAA and the Service with community perspectives on airport operations, (2) monitoring frequency and duration based upon monitoring results and related factors, and (3) completion of peer reviews for reports that evaluate and interpret monitoring data. The Applicants will coordinate the formation of the working group, and will be responsible for organizing meeting agendas, establishing meeting locations, and facilitating community involvement at such meetings. Working group meetings shall commence within 60 days after FAA's approval of airport construction, and shall occur on a quarterly basis for a minimum of 5 years after hovercraft operations commence.

Monitoring and Reporting

The Applicants shall implement the following monitoring and reporting program to increase knowledge regarding the species, and to assess the level of take caused by the proposed action:

a. Vessel-Based (Hovercraft) Monitoring During Initial Trial Operations

All hovercraft activities conducted prior to the construction of the airport and commencement of flight service will be considered "trial operations." Vessel-based monitoring will be conducted by a qualified Service-approved observer. Vessel-based monitoring is distinguished from other forms of monitoring in that it will be conducted from the hovercraft itself, as opposed to from other platforms (e.g., land, skiff). Methods for observing, estimating distances to northern sea otters and other marine species, and recording data quickly and accurately will be tested prior to hovercraft operations at Akutan. Reticle binoculars (e.g., 7 x 50 Bushnell or equivalent) and laser range finders (Leica LRF 1200 laser range finder or equivalent) are considered standard equipment for observers on board ships with marine mammal observers. Final observation methods will be approved by the Service.

Vessel-based observers will begin monitoring at least 30 minutes prior to the planned start of the hovercraft and during all periods of hovercraft operations to ensure the effectiveness of ramp-up as a mitigation measure. Observers will also monitor the safety areas prior to hovercraft operation. If northern sea otters are observed within the safety areas, hovercraft operations will be altered in accordance with procedures contained in the Route Operational Manual to avoid or minimize noise-related disturbance to animals occurring in the area.

Data for each northern sea otter, other marine mammals, and Steller's eiders observed in the action area during the period of hovercraft operations will be collected and provided to the Service in GIS format for mapping and analysis. Numbers of northern sea otters observed, frequency of observation, sea state, any behavioral changes due to hovercraft operations, and other pertinent variables will be recorded and entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered, and by subsequent manual checking of the database. These procedures will allow initial summaries

of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for additional processing and archiving.

Results from the vessel-based observations will provide: (1) A basis for real-time mitigation; (2) information needed to estimate the number of northern sea otters that are determined to have been harassed; (3) data on the occurrence, distribution, and activities of marine mammals in the area where hovercraft operations are conducted; and (4) data on the behavior and movement patterns of northern sea otters seen at times with and without hovercraft activity.

b. Baseline Skiff Surveys

The Applicants will conduct baseline skiff surveys in April during each construction year to document distribution and abundance of sea otters in the project area. A minimum of three skiff-based line transect surveys will be conducted during each survey event. Additionally, a survey event will be conducted in April after construction is completed to document distribution and abundance. Surveys will be conducted from a skiff or vessel and will encompass marine waters from a depth of 40 meters to mean high tide.

c. Reporting

Reports on vessel- and land-based activities during construction and vessel-based monitoring will be faxed or e-mailed to the Service on a regular basis. Reports will describe hovercraft operations and construction activities, and northern sea otter monitoring activities during the reporting period. Frequency and specific content of reports will be determined based on consultation with the Service.

Endangered Species Act

The proposed activity will occur within the range of the southwest Alaska DPS of the northern sea otter, which is presently listed as threatened under the ESA, as amended. The FAA and the Service's Anchorage Fish and Wildlife Field Office in Anchorage, Alaska, had consulted under Section 7 of the ESA, and concluded that the proposed activity would not jeopardize the southwest Alaska DPS of the northern sea otter. However, at the time the consultation occurred, critical habitat had not been designated. Therefore, we reinitiated consultation with the Applicants to take into consideration rescheduled project dates and potential impacts to critical habitat. As a result of that reinitiation, we concluded that the proposed activity would not jeopardize the continued existence of the southwest Alaska DPS of northern sea otter and would not result in the destruction or adverse modification of designated critical habitat. We have reinitiated Section 7 consultation with the Applicants to take into consideration the rescheduled dates and modifications of this project. We will also complete intra-Service section 7 consultation prior to finalization of the IHA, which will include these considerations as well as potential impacts to critical habitat.

National Environmental Policy Act (NEPA)

The Applicants provided a Final EA on the project in 2007 and the Service found that the Final EA met NEPA standards for analyzing the effects of the issuance of the IHA. The Applicants have prepared a Supplemental EA for the modifications to the proposed action. Subsequent to closure of the comment period for this IHA, we make an equivalent finding on the Supplemental EA. To obtain a copy of the Final and Supplemental EAs, contact the individual identified in the section **FOR FURTHER INFORMATION CONTACT**.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, Secretarial Order 3225, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. On July 24, 2008, and February 7, 2011, we contacted the Native Village of Akutan to offer Government-to-Government consultation on this project. The Tribal Administrator declined the offer, stating that their Tribe fully supports the development of an airport on Akun Island.

Proposed Authorization

The Service proposes to issue an IHA for small numbers of northern sea otters harassed incidentally by the Applicants while conducting the Akutan Airport, Alaska, Airport Construction and Hovercraft Operation. The final IHA would specify the starting date and ending date (1 year later) for the authorization. Authorization for incidental take beyond the period specified in the final IHA will require a request for renewal.

The final IHA would also incorporate the mitigation, monitoring, and reporting requirements discussed in this proposal. The Applicants will be responsible for following those requirements. These authorizations do not allow the intentional taking of northern sea otters.

If the level of activity exceeds that described by the Applicants, or the level or nature of take exceeds those projected here, the Service will reevaluate its findings. The Secretary may modify, suspend, or revoke an authorization if the findings are not accurate or the conditions described herein are not being met.

Request for Public Comments

The Service requests interested persons to submit comments and information concerning this proposed IHA. Consistent with section 101(a)(5)(D)(iii) of the MMPA, we are opening the comment period on this proposed authorization for 30 days (*see* **ADDRESSES**).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 22, 2011.

Geoffrey L. Haskett,

Regional Director, Alaska Region.

[FR Doc. 2011–7764 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2011–N061; 94300–1122–0000–Z2]

Wind Turbine Guidelines Advisory Committee; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will host a Wind Turbine Guidelines Advisory Committee (Committee) meeting on April 27, 2011. The meeting is open to the public. The meeting agenda will include a presentation and discussion of

the Service's Draft Land-Based Wind Energy Guidelines.

DATES: The meeting will take place on April 27, 2011, from 9 a.m. to 5 p.m. Eastern Time. If you are a member of the public wishing to attend, you must register online no later than April 20, 2011 (see "Meeting Participation Information" under **SUPPLEMENTARY INFORMATION**).

ADDRESSES: *Meeting Location:* U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 530, Arlington, VA 22203 (*see* "Meeting Location Information" under **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, U.S. Department of the Interior, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2007, the Department of the Interior published a notice of establishment of the Committee in the **Federal Register** (72 FR 11373). The Committee's purpose is to provide advice and recommendations to the Secretary of the Interior (Secretary) on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. All Committee members serve without compensation. In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), a copy of the Committee's charter is filed with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, U.S. Senate; Committee on Natural Resources, U.S. House of Representatives; and the Library of Congress. The Secretary appointed 22 individuals to the Committee on October 24, 2007, representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. The Committee provided its recommendations to the Secretary on March 4, 2010.

Draft Land-Based Wind Energy Guidelines

The Draft Land-Based Wind Energy Guidelines were made available for public comment on February 18, 2011, with a comment-period ending date of May 19, 2011. The draft Guidelines are available for comment at *http://www.fws.gov/windenergy/docs/Wind_Energy_Guidelines_2_15_2011FINAL.pdf.* We will publish the final Guidelines for public use after consideration of any comments received. The purpose of the Guidelines, once finalized, will be to provide recommendations on measures to avoid, minimize, and compensate for effects to fish, wildlife, and their habitats. For more information, including how to comment on the draft Guidelines, *see* our **Federal Register** notice of February 18, 2011 (76 FR 9590).

Meeting Location Information

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least 1 week in advance of the meeting.

Meeting Participation Information

All Committee meetings are open to the public. The public has an opportunity to comment at all Committee meetings.

We require that all persons planning to attend the meeting register at *http://www.fws.gov/windenergy* no later than April 20, 2011. We will give preference to registrants based on date and time of registration. Limited standing room at the meeting may be available if all seats are filled.

Dated: March 29, 2011.

Rachel London,

Alternate Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.

[FR Doc. 2011–7788 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N069; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; 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, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before May 2, 2011. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by May 2, 2011.

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.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our regulations in the Code of Federal Regulations (CFR)] at 50 CFR part 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Louisiana State University, Department of Geology and Geophysics, Baton Rouge, LA; PRT–36826A

The applicant requests a permit to import biological specimens from broad-snouted caiman (*Caiman latirostris*) from ranched animals in Argentina for the purpose of scientific research.

Applicant: Museum of Zoology and Herbarium, University of Michigan, Ann Arbor, MI; PRT–693112

The applicant requests a permit to export and re-import non-living museum/herbarium specimens of endangered and threatened species (excluding bald eagles) previously legally accessioned into the permittee's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Metro Richmond Zoo, Moseley, VA; PRT–37443A

The applicant requests a permit to import two captive-bred Diana monkeys (*Cercopithecus diana*) from the Port Lympne Wildlife Park, UK, for the purpose of enhancement of the survival of the species.

Applicant: Minnesota Zoo, Apple Valley, MN; PRT–37786A

The applicant requests a permit to import seven captive-bred Asian dhole (*Cuon alpinus*) from the European Association of Zoos, EU, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

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: Daniel Fore, Austin, TX; PRT–37816A;

Applicant: Robert Cooker, Wilsonville, AL; PRT–33960A;

Applicant: Terry Prisk, Highland, MI; PRT–37689A;

Applicant: Robert Breuder, Barrington, IL; PRT–36734A;

Applicant: Samuel Monarch, Hardinsburg, KY; PRT–37370A;

Applicant: Roger Jones, Memphis, TN; PRT–36490A.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Mote Marine Laboratory, Sarasota, FL; PRT–100361

The applicant requests renewal of the permit to authorize take and import of West Indian manatees (*Trichechus manatus*) in Florida and from the Caribbean region for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: March 25, 2011.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–7806 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L13200000–EL0000; WYW177903]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the West Antelope II South Coal Tract described below in Converse County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 10 a.m., on Wednesday, June 15, 2011. Sealed bids must be submitted on or before 4 p.m., on Tuesday, June 14, 2011.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Tyson Sackett, Acting Coal Coordinator, at 307–775–6258, and 307–775–6487, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Antelope Coal LLC, Gillette, Wyoming. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following described lands located 2–4 miles south of the Campbell/Converse County line and 1–3 miles east of State Highway 59.

T. 40 N., R. 71 W., 6th Principal Meridian
Sec. 5, lot 18;
Sec. 8, lots 1 through 3 inclusive, lots 6 through 11 inclusive, and lots 14 through 16 inclusive;
Sec. 9, lots 2 through 16 inclusive;
Sec. 10, lots 5, 6, and lots 11 through 14 inclusive;
Sec. 14, lot 13; and
Sec. 15, lots 2 through 7 inclusive, and lots 10 through 16 inclusive.

Containing 1,908.60 acres, more or less in Campbell and Converse Counties, Wyoming.

The LBA tract is adjacent to the western and southern lease boundary of the Antelope Mine and to Federal leases to the east and north as well as a State

of Wyoming lease, all controlled by the Antelope Mine. It is adjacent to additional unleased Federal coal to the west and south.

All of the acreage offered has been determined to be suitable for mining except for the county road and right-of-way in the far southeast portion of the LBA tract. However, the county road as well as pipelines and utilities can be moved to permit coal recovery. Antelope Creek crosses a small corner in the far northwest portion of the LBA tract, and no mining will take place on the creek or a 100 foot buffer on either side of it. No producing oil and/or gas wells have been drilled on the LBA tract. The surface estate of the LBA tract is largely owned by Antelope Coal Company except for six lots in the southeast part of the tract managed by the United States Forest Service.

The tract contains surface mineable coal reserves in the Wyodak-Anderson coal zone currently being recovered in the adjacent existing mine. Although two primary coal seams occur on the LBA tract (the Anderson and the Canyon), only the Anderson is considered to be mineable due to thickness and incremental stripping ratio. The Canyon splits into several seams and, at various locations on the LBA tract, individual splits are either absent completely, are too thin, or are too deep to be included based on current market conditions and production costs. The Anderson seam varies from about 17 to 25 feet thick. Overburden to the Anderson seam ranges from approximately 80 to 160 feet thick on the LBA.

The tract contains an estimated 56,356,000 tons of mineable coal. This estimate of mineable reserves includes the main Anderson seam mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include coal in the deeper Canyon seam splits. In addition, it does not include the adjacent State of Wyoming coal, although these reserves may be recovered in conjunction with the LBA tract. It also excludes coal within and along Antelope Creek. The total mineable stripping ratio of the coal in bank cubic yards per ton is approximately 5.0:1. Potential bidders for the LBA should consider the recovery rate expected from single seam mining.

The West Antelope II South LBA coal is ranked as subbituminous C. The overall average quality for the Anderson seam on an as-received basis is 8,807 British Thermal Units per pound containing approximately 0.28 percent sulfur. The average quality of the Anderson seam make the coal reserves equal to some of the best quality coal currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder offering the highest cash amount provided that the high bid meets or exceeds the BLM estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The BLM Wyoming State Office Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m. local time, on Tuesday, June 14, 2011, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by surface mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the address above. Case file documents, WYW177903, are available for inspection at the BLM Wyoming State Office.

Donald A. Simpson,

State Director.

[FR Doc. 2011–7596 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000.51010000.ER0000. LVRWK09K1000; WYW174597; COC72909; UTU87237]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Energy Gateway South 500-Kilovolt (kV) Alternating Current Transmission Line Project in Wyoming, Colorado, and Utah, and Possible Land Use Plan Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Wyoming State Office intends to prepare an Environmental Impact Statement (EIS). By this notice the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS and possible plan amendments. Comments on issues may be submitted in writing until June 30, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media and the BLM Web site at: *http://www.blm.gov/wy/st/en/info/NEPA/documents/hdd/gateway_south.html.* In order to be considered in the Draft EIS, comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to any of the plans identified in this notice by any of the following methods:

- Web site: *http://www.blm.gov/wy/st/en/info/NEPA/documents/hdd/gateway_south.html.*
- E-mail: *GatewaySouth_WYMail@blm.gov.*
- Mail: BLM Wyoming State Office, Energy Gateway South Transmission Project, P.O. Box 21550, 5353 Yellowstone Road, Cheyenne, Wyoming 82003, Attention: Tamara Gertsch.

FOR FURTHER INFORMATION CONTACT: To have your name added to our mailing list, contact Tamara Gertsch, National Project Manager; telephone (307) 775–6115; address: BLM Wyoming State Office, P.O. Box 21550, Cheyenne, Wyoming 82003; e-mail: *GatewaySouth_WYMail@blm.gov.*

SUPPLEMENTARY INFORMATION: The EIS for the Proposed Energy Gateway South 500-kV Alternating Current (AC) Transmission Line Project in Wyoming, Colorado, and Utah may address amendments to the following land use plans:

- Colorado Canyons National Conservation Area Resource Management Plan (RMP), 2004*
- Rawlins RMP, 2008
- Green River RMP, 1997
- Grand Junction RMP, 1987
- Little Snake RMP, 1989
- White River RMP, 1997

- House Range RMP, 1987
- Warm Springs RMP, 1987
- Price RMP, 2008
- Ashley National Forest Land and Resource Management Plan (LRMP), 1986
- Manti-La Sal National Forest LRMP, 1986
- Uinta National Forest LRMP, 2003
- Medicine Bow National Forest Revised LRMP, 2003
- Wasatch-Cache National Forest LRMP, 2003
- Routt National Forest Revised LRMP, 1997
- White River National Forest Revised LRMP, 2002

The applicant PacifiCorp, doing business as Rocky Mountain Power, has requested a right-of-way (ROW) authorization to construct, operate, and maintain a 500-kV overhead transmission line that would extend approximately 400 miles, depending on the route selected, from south-central Wyoming to central Utah, potentially crossing northwestern Colorado. The Project would include a single-circuit 500-kV AC transmission line beginning near Medicine Bow, in Carbon County, Wyoming, at the planned Aeolus Substation, and would extend south and west to the planned Clover Substation, near Mona, in Juab County, Utah. The Project also would include two series compensation stations, about 200 acres in size, at two separate points between the planned Aeolus and Clover Substations to improve transport capacity and efficiency of the transmission line. When completed, the Project would transmit about 1,500 megawatts of electricity generated from renewable and thermal sources at planned facilities in Wyoming. Possible alternative routes identified to date cross Federal, State, tribal, and private lands. The requested ROW width on Federal lands for construction and operation of the Project is 250 feet. The Project proponent proposes to predominantly use self-supporting steel lattice single-circuit towers from 140 to 190 feet in height with average spans between towers of 1,000 to 1,500 feet (4 to 5 structures per mile). Permanent and temporary access roads a minimum of 14 feet wide would be needed for the Project. Temporary access roads would be needed for construction only. Temporary work space would be needed during construction for material storage, fly-yards, conductor tensioning sites, and to accommodate vehicles and equipment. Alternative routes currently identified would use portions of utility corridors on Federal lands, parallel portions of existing overhead and underground utilities and roadways, or cross undisturbed land areas.

The BLM will respond to applications for ROWs on BLM-administered lands, and the U.S. Forest Service (USFS) will respond to applications for ROW on lands it administers. Documents pertinent to this proposal may be examined at the following offices:

- BLM, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009
- BLM, Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82301
- BLM, Rock Springs Field Office, 280 Highway 191 N., Rock Springs, Wyoming 82901
- BLM, Little Snake Field Office, 455 Emerson Street, Craig, Colorado 81625
- BLM, White River Field Office, 220 East Market Street, Meeker, Colorado 81641
- BLM, Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado 81506
- BLM, Fillmore Field Office, 35 East, 500 North, Fillmore, Utah 84631
- BLM, Moab Field Office, 82 East Dogwood, Moab, Utah 84532
- BLM, Price Field Office, 125 South, 600 West, Price, Utah 84501
- BLM, Vernal Field Office, 170 South, 500 East, Vernal, Utah 84078
- BLM, Richfield Field Office, 150 East, 900 North, Richfield, Utah 84701
- U.S. Forest Service (Lead Forest Office), Dixie National Forest Office, 1789 North Wedgewood Lane, Cedar City, Utah 84721

Pursuant to Section 368 of the Energy Policy Act of 2005 (42 U.S.C. 15926), a Programmatic EIS was prepared by the Department of Energy for energy corridors in the 11 western states (Washington, Oregon, Idaho, Montana, Wyoming, California, Nevada, Utah, Colorado, Arizona, and New Mexico), and notice of its availability was published on November 28, 2008 (73 FR 72521). Records of Decision (ROD) signed January 14, 2009, designated energy corridors and provided guidance, best management practices, and mitigation measures to be used where linear facilities are proposed crossing Federal lands. Designation of corridors does not require their use, nor does such designation exempt the Federal agencies from conducting an environmental review on each project therin. The Final RODs are available at the following Web site: *http://corridoreis.anl.gov/eis/guide/index.cfm.* The Project EIS will take into consideration the use of the corridors described in the Final Programmatic EIS. The BLM is the designated lead Federal agency for preparation of the EIS as defined at 40 CFR 1501.5. Agencies with legal jurisdiction or special expertise have been invited to participate as cooperating agencies in preparation of the EIS. The following agencies have agreed to participate as cooperating agencies: USFS; Bureau of Indian Affairs; U.S. Army Corps of Engineers; Department of Defense, and U.S. Fish and Wildlife Service; the States of Wyoming, Colorado, and Utah; Mesa, Moffat, and Rio Blanco counties, Colorado; Carbon, Duchesne, Emery, Juab, Sanpete, and Uintah counties, Utah; and Carbon County, Little Snake River Conservation District, Medicine Bow Conservation District, Saratoga-Encampment-Rawlins Conservation District, and Sweetwater County Conservation District, Wyoming.

During the public scoping period, the BLM will solicit public comments on behalf of all cooperating agencies regarding issues, concerns, and opportunities that should be considered in the analysis of the proposed action. Comments on issues and potential impacts, or suggestions for additional or different alternatives may be submitted to the addresses listed in the **ADDRESSES** section above. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM and cooperating agencies have identified the following preliminary issues:

- Socioeconomic impacts;
- Public health and safety;
- Air quality;
- Soil disturbances and erosion;
- Wildlife and vegetation, including threatened and endangered and sensitive species;
- Cultural resources and historical sites;
- Paleontological resources;
- Changes in visual quality and settings;
- National Scenic and Historic Trails; and
- Conflicts with other land uses and management prescriptions on various areas of critical environmental concern, scenic byways, inventoried roadless areas on National Forests, wilderness study areas, and wilderness characteristic lands that occur within the Project area.

Authorization of this proposal may require amendment(s) of the BLM and USFS land use plans listed above.

By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, predicated on the findings of the EIS. Approval of this proposal may also result in the amendment(s) of USFS

LRMPs. Pursuant to 36 CFR 219.9, the USFS notifies the public of potential amendments to LRMPs. If a land use plan amendment is necessary, the BLM and USFS would integrate the land use planning process as described in 43 CFR subpart 1610 and 36 CFR 219.8, concurrently, into the NEPA process for this Project. The plan amendments would comply with all applicable Federal law, regulations, and agency policies. The plan amendments would apply only to public lands managed by the BLM or USFS and would recognize all valid existing rights.

Native American tribes will be consulted to identify areas, sites, and objects important to their cultural and religious heritage. Plan amendment decisions would comply with the Endangered Species Act and follow interagency agreements with the U.S. Fish and Wildlife Service regarding the Section 7 consultation process. Because the proposed Project may involve action in floodplains or wetlands, this Notice of Intent also serves as a notice of proposed floodplain or wetland action, in accordance with Department of Energy regulations for Compliance with Floodplain and Wetlands Environmental Review Requirements at 10 CFR 1022.12(a). The EIS will include a floodplain/wetland assessment and, if required, a floodplain/wetland statement of findings will be issued with the Final EIS or ROD.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) as provided for in 36 CFR 800.2(d)(3)). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets.

Before including your address, phone number, e-mail address, or any other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may request in your comment that your personal identifying information be withheld from public review, we cannot guarantee that we will be able to do so.

Donald A. Simpson,

Wyoming State Director, Bureau of Land Management.

[FR Doc. 2011–7736 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW0300. L5110000. GN0000. LVEMF1000880 241A; 11–08807; MO#4500019124; TAS: 14X5017]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Hycroft Mine Expansion Project, Humboldt and Pershing Counties, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Winnemucca District, Black Rock Field Office, Winnemucca, Nevada intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until June 30, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/wfo.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Hycroft Mine Expansion Project by any of the following methods:

- *Web site: http://www.blm.gov/nv/st/en/fo/wfo.html;*
- *E-mail: wfoweb@blm.gov;*
- *Fax:* (775) 623–1503; or
- *Mail:* BLM Winnemucca District, Black Rock Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445.

Documents pertinent to this proposal may be examined at the Black Rock Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Kathleen Rehberg, project lead, telephone: (775) 623–1500; e-mail: *Kathleen_Rehberg@blm.gov.*

SUPPLEMENTARY INFORMATION: Hycroft Resources and Development, Inc. (Hycroft) proposes to expand its existing open pit operation and associated disturbance of 1,371 acres by including an additional 2,041 acres in its operation. This would lead to operations on 3,412 acres of public land managed by the BLM Winnemucca District. The proposal would also add 1,812 acres of new disturbance on private land controlled by Hycroft. The proposed operations would extend the mine life by 12 years. The BLM regulates this operation through 43 CFR part 3809.

Current mining was analyzed in four previous environmental assessments: NV–020–4–25–EA, Lewis Mine Project, Decision Record (DR)/Finding of No Significant Impacts (FONSI) dated 4/4/1984; NV–020–07–31–EA, Crofoot Project, DR/FONSI dated 8/3/1987; NV020–05–19–EA Brimstone Pit Expansion Project, DR/FONSI dated 5/5/1995; NV–020–06–30–EA, Hycroft Crofoot/Lewis Mine, DR/FONSI dated 10/2/1996.

A range of alternatives will be developed, including the no-action alternative, to address the issues identified during scoping. Mitigation measures will be considered to minimize environmental impacts and to assure the proposed action does not result in unnecessary or undue degradation of public lands.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues:

(a) Waste rock dumps, heap leach pads, or pit walls may potentially produce acid rock drainage or heavy metals. These features need to be analyzed to ensure that the proposed action does not degrade the waters of the State or cause undue or unnecessary degradation of public lands; (b) Potential effects to the viewshed posed by the close proximity of the project to the Black Rock Desert-High Rock Canyon-Emigrant Trails National Conservation Area (NCA) and the Black Rock Desert Wilderness Area. While the project is outside of the NCA and the wilderness area, it is within the viewshed of both areas; (c) An updated inventory of lands with wilderness characteristics will be utilized in order to comply with Secretarial Order 3310 and should lands with wilderness characteristics be identified they will be considered in the NEPA process; (d) Wildlife issues include potential impacts to sage-grouse winter habitat, potential bighorn sheep habitat, and

possible habitat for Townsend's big-eared bats; and (e) A BLM sensitive plant species, the Crosby buckwheat, and a Nevada at-risk plant, the sand cholla, have been observed in the project area.

The BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

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.

Gene Seidlitz,

Manager, Winnemucca District.

Authority: 40 CFR 1501, 43 U.S.C. 1701 *et seq.* and 43 CFR 3809.

[FR Doc. 2011–7718 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT980300–L12100000–PH0000–24–1A]

Notice of Utah's Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah RAC will meet Tuesday, May 10, 2011, (8 a.m.–5 p.m.), in Salt Lake City, Utah.

ADDRESSES: The Council will meet at the Peery Hotel (Broadway 110 meeting room), 110 West Broadway (300 South), Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Utah.

Planned agenda topics include a welcome and introduction of new Council members, election of officers, overview and procedures of resource advisory councils, issues and concerns in BLM Utah, RAC subgroup report (Rich County Allotment), overview of the Utah Partners for Conservation and Development group, an overview of the Federal Lands Recreation Enhancement Act, facts about the Wild Lands Initiative, and future project work for the RAC. A half-hour public comment period, where the public may address the Council, is scheduled to begin at 2 p.m. Written comments may be sent to the BLM address listed above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: March 25, 2011.

Jeff Rawson,

Assoc. State Director.

[FR Doc. 2011–7726 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164400]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164400, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Tyler Rockies Exploration, Ltd. for competitive oil and gas lease WYW164400 for land in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164400 effective October 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2011–7594 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK963000–L14300000–ET–P: F–81469, F–81490]

Public Land Order No. 7760; Extension of Public Land Order No. 6839; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the withdrawal created by Public Land Order No. 6839, which modified Public Land Order No. 2344, as amended, for a 20-year period until April 1, 2031. This extension is necessary to allow the continued protection of the Barrow Base Line Observatory (formerly known as the Barrow Geophysical Monitoring for Climatic Change Observatory) and the Barrow Magnetic Observatory (formerly known as the Barrow Geomagnetic Observatory). This order also provides the official surveyed land description of the areas withdrawn by Public Land Order No. 6839.

DATES: *Effective Date:* April 2, 2011.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, BLM Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration and the U.S. Geological Survey requested the extension for the continued protection of the facilities

and uninterrupted performance of their missions at the Barrow Base Line Observatory and the Barrow Magnetic Observatory, respectively. The land continues to be used for the purpose for which it was withdrawn by both agencies. The withdrawal extended by this order will expire on April 1, 2031, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3120).

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 6839 (56 FR 13413 (1991)), which modified Public Land Order No. 2344 (26 FR 3701 (1961)), transferred jurisdiction of approximately 216 acres of public land to the National Oceanic and Atmospheric Administration and the United States Geological Survey. This land had been withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, but not disposal of materials under the Act of July 31, 1947, 30 U.S.C. 601–604, as amended. The National Oceanic and Atmospheric Administration facility encumbers 171 acres for the Barrow Base Line Observatory. The United States Geological Survey facility encumbers 45 acres for the Barrow Magnetic Observatory. The withdrawal for both facilities is hereby extended until April 1, 2031.

2. The plat of dependent resurvey, U.S. Survey No. 5253, officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, on July 14, 2010, establishes lots 13, 14, 15, and 16 in T. 23 N., R. 18 W., Umiat Meridian containing 215.69 acres, to replace the land described in Paragraphs 1(a) and (b) and 2 of Public Land Order No. 6839 (56 FR 13413 (1991)).

Authority: 43 CFR 2310.4.

Dated: March 23, 2011.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2011–7725 Filed 3–31–11; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT020000–10–L13110000–EJ0000–24–1A]

West Tavaputs Plateau Road Restriction Order, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of restrictions.

SUMMARY: This notice is to inform the public that the Bureau of Land Management (BLM) is restricting the use of certain roads in the Price Field Office, Utah, as follows: The public is prohibited from driving a motorized vehicle on Horse Bench, Jack Canyon, Jack Ridge, and Cedar Ridge Roads on the West Tavaputs Plateau in Carbon County, Utah, unless specifically authorized by the BLM to do so.

DATES: The Road Restriction Order is effective upon publication of this notice in the **Federal Register** and will remain in effect until further notice.

ADDRESSES: Copies of this road restriction order are available and posted at the Price Field Office, Bureau of Land Management, 125 South 400 West, Price, Utah 84501, or via the Internet at *http://www.blm.gov/ut/st/en/fo/price.html.*

FOR FURTHER INFORMATION CONTACT: Don Stephens, Natural Resource Specialist, telephone (435) 636–3608; address 125 South 600 West, Price, Utah 84501; e-mail *Don_Stephens@blm.gov.* Persons who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Four roads (Horse Bench, Jack Canyon, Jack Ridge, and Cedar Ridge), totaling approximately 41 miles, are hereby restricted to authorized use only. Horse Bench, Jack Canyon, Jack Ridge, and Cedar Ridge Roads in Carbon County, Utah, located in the following lands:

Horse Bench Road

Salt Lake Meridian, Utah

T. 11 S., R. 18 E., sec. 27, SE¼SE¼; sec. 33, S½SE¼; sec. 34, N½NE¼, SW¼NE¼, and SW¼.

Salt Lake Meridian, Utah

T. 12 S., R. 18 E., sec. 4, lots 1 to 4, inclusive; sec. 5, lots 1 to 4, inclusive; sec. 6, lots 1 to 3, inclusive, and NW¼SW¼.

T. 12 S., R. 17 E., sec. 1, SE¼SW¼, S½SE¼, and NE¼SE¼; sec. 9, S½SE¼ and SE¼SW¼; sec. 10, S½; sec. 11, SE¼NE¼, N½SW¼, and N½SE¼; sec. 12, NW¼; sec. 17, N½NE¼, SW¼NE¼, SE¼NW¼, N½SW¼, and SW¼SW¼; sec. 18, S½SE¼ and SE¼SW¼; sec. 19, lot 1, and NE¼NW¼.

T. 12 S., R. 16 E., sec. 23, NE¼SE¼ and S½SE¼; sec. 24, NE¼, SE¼NW¼, and N½SW¼; sec. 26, lots 2, 3, and 7, SE¼NW¼ and NE¼SW¼; sec. 27, SE¼SE¼.

Cedar Ridge Road

Salt Lake Meridian, Utah

T. 13 S., R. 17 E., sec. 8, S½SW¼; sec. 17, NW¼NW¼; sec. 18, lots 2 to 4, inclusive, N½NE¼, and E½NW¼; sec. 19, lot 1, N½N½; sec. 20, NW¼, NE¼SW¼, W½SE¼, and SE¼SE¼; sec. 21, S½S½.

T. 13 S., R. 16 E., sec. 13, S½; sec. 22, SE¼SE¼; sec. 23, N½NE¼, SW¼NE¼, N½SW¼, and SW¼SW¼; sec. 24, NW¼NW¼; sec. 27, N½NE¼, E½NW¼, NW¼NW¼, and NW¼SW¼; sec. 28, E½SE¼, SW¼SE¼, and SE¼SW¼; sec. 33, N½NW¼.

Jack Ridge Road

Salt Lake Meridian, Utah

T. 13 S., R. 16 E., sec. 8, NE¼; sec. 9, SE¼NE¼, SW¼NW¼, and N½S½; sec. 10, lot 1, NW¼NE¼, SW¼NE¼, and S½NW¼; sec. 11, lot 2, W½NE¼ and N½NW¼; sec. 12, S½NW¼.

Jack Canyon Road

Salt Lake Meridian, Utah

T. 13 S., R. 17 E., sec. 5, SE¼SW¼; sec. 7, lot 3, S½NE¼, SE¼NW¼, and NE¼SW¼; sec. 8, NW¼.

T. 13 S., R. 16 E., sec. 1, SW¼SW¼; sec. 3, lots 3 to 5, inclusive, SE¼SW¼ and S½SE¼; sec. 12, NE¼, N½NW¼, and NE¼SE¼.

T. 12 S., R. 16 E., sec. 34, SW¼SW¼.

These areas are located on the West Tavaputs Plateau approximately 30 miles east-northeast of Price, Utah. Analysis of the road restrictions was included in the West Tavaputs Natural Gas Full Field Development Plan Final Environmental Impact Statement (EIS). The reasons for the road restrictions are discussed in detail within the Record of Decision (ROD) for that EIS, which was signed on July 2, 2010. Restricting the motorized use of these roads is in conformance with the 2008 Price Field Office Approved Resource Management Plan (RMP).

In order to reflect the decision to restrict motorized travel on the four roads, the Travel Management Plan Map (Map R–18) implemented as part of the ROD for the Price RMP will be modified at the time the road restriction order takes effect.

On all public lands, under Section 303(a) of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1733(a), 43 CFR 8360.0–7, 43 CFR 9260.0–7, and 43 CFR 8364.1, the BLM will enforce this road restriction order for Cedar Ridge, Jack Ridge, Jack Canyon, and Jack Ridge roads.

Persons who are exempt from the restriction include:

(a) Any Federal, State, or local officers engaged in fire, emergency, or law enforcement activities;

(b) BLM employees engaged in official duties; and

(c) Authorized persons or their designees for purposes specifically authorized by the BLM to access the restricted roads.

Penalties: Any person who violates these restrictions may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

This Road Restriction Order does not adjudicate or determine the validity of any claimed right under Revised Statute (R.S.) 2477. Nothing in this Road Restriction Order alters or extinguishes any valid R.S. 2477 right that the county or individuals may have, or their right to assert and protect R.S. 2477 rights, and to challenge in Federal court or other appropriate venue any restrictions that they believe are inconsistent with their rights.

Authority: 43 CFR 8364.1.

Jeff Rawson,

Associate State Director.

[FR Doc. 2011–7723 Filed 3–31–11; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Handheld Electronic Computing Devices, Related Software, and Components Thereof,* DN 2790; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Microsoft Corporation on March 22, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain handheld electronic computing devices, related software, and components thereof. The complaint names as respondents Barnes & Noble, Inc. of New York, NY; Barnesandnoble.com LLC of New York, NY; Hon Hai Precision Industry Co., Ltd. of Tucheng City, Taiwan; Foxconn Electronics, Inc. of Tucheng City, Taiwan; Foxconn Precision Component (Shenzhen) Co. Ltd. of Guandong, China; Foxconn International Holdings Ltd. of Cheung Sha Wan Kowloon, Hong Kong; and Inventec Corporation of Shin-Lin District, Taiwan.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

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

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2790") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: March 22, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–7732 Filed 3–31–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Electronic Devices, Including Mobile Phones, Mobile Tablets, Portable Music Players, and Computers, and Components Thereof,* DN 2792; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Nokia Corporation, Nokia Inc., and Intellisync Corporation on March 28, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including mobile phones, mobile tablets, portable music players, and computers, and components thereof. The complaint names as respondent Apple, Inc. of Cupertino, CA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

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

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2792") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: March 28, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–7734 Filed 3–31–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Video Game Systems and Wireless Controller and Components Thereof,* DN 2791; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for

this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Creative Kingdoms, LLC and New Kingdoms, LLC on March 21, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video game systems and wireless controller and components thereof. The complaint names as respondents Nintendo of America, Inc. of Redmond, Washington and Nintendo Co., Ltd. of Kyoto, Japan.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

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

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2791") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: March 22, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–7733 Filed 3–31–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–318 and 731–TA–538 and 561 (Third Review)]

Sulfanilic Acid From China and India

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on sulfanilic acid from India and the antidumping duty orders on sulfanilic acid from China and India.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on sulfanilic acid from India and the antidumping duty orders on sulfanilic acid from China and India would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 2, 2011. Comments on the adequacy of responses may be filed with the Commission by June 13, 2011. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On August 19, 1992, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of sulfanilic acid from China (57 FR 37524). On March 2, 1993, Commerce issued antidumping and countervailing duty orders on imports of sulfanilic acid from India (57 FR 12025

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–243, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

and 12026). Following five-year reviews by Commerce and the Commission, effective June 8, 2000, Commerce issued a continuation of the countervailing duty order on sulfanilic acid from India and the antidumping duty orders on sulfanilic acid from China and India (65 FR 36404). Following second five-year reviews by Commerce and the Commission, effective May 11, 2006, Commerce issued a continuation of the countervailing duty order on sulfanilic acid from India and the antidumping duty orders on sulfanilic acid from China and India (71 FR 27449). The Commission is now conducting third reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and India.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, expedited first five-year review determinations, and full second five-year review determinations, the Commission defined the *Domestic Like Product* as all sulfanilic acid, regardless of form or grade.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, expedited first five-year review determinations, and full second five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of sulfanilic acid.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 13, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide

equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Countries* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject*

Merchandise from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies),* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: March 22, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–7275 Filed 3–31–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–847 and 849 (Second Review)]

Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan Andromania

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on carbon and alloy seamless standard, line, and pressure pipe from Japan and Romania.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on carbon and alloy seamless standard, line, and pressure pipe from Japan and Romania would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 2, 2011. Comments on the adequacy of responses may be filed with the Commission by June 13, 2011. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On June 26, 2000, the Department of Commerce ("Commerce") issued an antidumping duty order on the imports of small and large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan (65 FR 39360). On August 10, 2000, Commerce issued an antidumping duty order on the imports of large diameter carbon and alloy seamless standard, line, and pressure pipe from Romania (65 FR 48963). Following five-year reviews by Commerce and the Commission, effective May 8, 2006, Commerce issued a continuation of the antidumping duty orders on imports of certain carbon and alloy seamless standard, line, and pressure pipe from Japan and Romania (71 FR 26746). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Japan and Romania.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its full first five-year review determinations, the Commission found two *Domestic Like Products* corresponding to the two scopes of the investigations: Small diameter carbon and alloy seamless standard, line, and pressure pipe and large diameter carbon and alloy seamless standard, line, and pressure pipe. Certain Commissioners defined the *Domestic Like Product* differently in the original determinations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full first five-year review determinations, the Commission found two *Domestic Industries:* A small diameter carbon and alloy seamless standard, line, and pressure pipe industry and a large diameter carbon and alloy seamless standard, line, and pressure pipe industry, encompassing all domestic producers of those

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–242, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

products, respectively. Certain Commissioners defined the *Domestic Industry* differently in the original determinations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 13, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to this Notice of Institution: Please provide the requested information separately for each *Domestic Like Product,* as defined by the Commission in its original determinations and its first five-year review determinations, and for each of the products identified by Commerce as *Subject Merchandise.* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in

section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Countries* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies),* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: March 22, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–7276 Filed 3–31–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Proposed Information Collection Request (ICR) for the Family Medical Leave Act (FMLA) Employee and Employer Surveys; Comment Request

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department or DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Department is soliciting comments concerning its proposal to collect information on employees' and employers' experience with family and medical leave under the Family Medical Leave Act. A copy of the proposed ICR can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be received by the office listed in the addressee section below on or before May 31, 2011.

ADDRESSES: You may submit comments identified by [RIN or some other identifier] by either one of the following methods: E-mail *WHDPRAComments@dol.gov;* Mail, Hand Delivery, Courier: Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and [RIN or some other identifier] identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–0406 (this is not a toll free number). Copies of this notice may be obtained in alternative formats (Large print, Braille, Audio Tape, or Disc), upon request by calling (202) 693–0023 (this is not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or to request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* Given changes in economic conditions and the Family and Medical Leave Act (FMLA) regulations since the 2000 employee and employer surveys, the Wage and Hour Division (WHD) of the U.S. Department of Labor needs to collect new information on the use and need of FMLA leave in order to update DOL's understanding of leave-taking behavior and to close current data gaps remaining from the previous surveys. To better understand both employees' and employers' experience with FMLA, two new surveys will be conducted to collect information about the need for and the experience with family and medical leave from employees' and employers' perspectives. This study will help the Department by providing information on current workplace policies and practices related to family and medical leave. An in-depth analysis of private sector FMLA policies allows WHD to determine how those policies affect the work-life balance of workers and the productivity and work flow of employers. The study enables DOL to shape future regulatory options, craft interpretive guidance (such as plain-language fact sheets), develop compliance programs (employer outreach and investigation policies), and establish regulatory priorities based on sound, current data rather than on outdated data or anecdotal information. Finally, the study provides a data set by which DOL can evaluate the effect on employer compliance of a range of FMLA activities—regulatory, educational, investigative, and legal—on employer compliance.

Two previous FMLA surveys have been conducted. The first FMLA study, in which workers and employers were surveyed to learn about family and medical leave policies and their effect on workers and their employers, was conducted in 1995 by the bipartisan Commission on Family and Medical Leave. The final report on this survey, titled "A Workable Balance: Report to Congress on Family and Medical Leave Policies," is available online at *http://www.dol.gov/whd/fmla/1995Report/family.htm.* The second study was conducted in 2000 by Westat at the request of the Department. The Westat study updated the 1995 data by administering employee and employer surveys similar to the 1995 surveys. The second study entitled "Balancing the Needs of Families and Employers: Family and Medical Leave Surveys, 2000 Update" is available on the Department's website at *http://www.dol.gov/whd/fmla/toc.htm.* An additional source of information came from the Department's Request for Information (RFI) issued on December 1, 2006. The RFI asked the public to comment on their experiences with, and observations of, the Department's administration of the law and the effectiveness of the regulations. The qualitative data obtained provided a detailed anecdotal picture of the workings of the FMLA.

The period for conducting this study is expected to last no later than January 14, 2012.

II. *Desired Focus of Comments:* Currently, the Department of Labor is soliciting comments concerning the above data collection for the FMLA Employee and Employer Surveys. Comments are requested which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the information collection 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 submissions of responses.

III. *Current Actions:* At this time, the Department is requesting clearance for an employer and employee survey focusing on the Family Medical Leave Act of 1993.

Type of review: New information collection request.

OMB Number: None.

Affected Public: Private sector, public sector, individuals, and households.

For the FMLA Employee survey:

Frequency: Once.

Total Responses: 3,000 respondents.

Average Time per Response: 26 minutes.

Estimated Total Burden Hours: 1,292 hours.

Total Burden Cost: $0.

For the FMLA Employer Survey:

Frequency: Once.

Total Responses: 1800 firms.

Average Time per Response: 36 minutes.

Estimated Total Burden Hours: 2164 hours.

Total Burden Cost: $0.

Note that, due to rounding, the numbers for the totals may differ from the sum of the component numbers.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

Signed at Washington, DC, this 23rd day of March 2011.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2011–7345 Filed 3–28–11; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11221]

ZRIN 1210–ZA09

Amendment to Prohibited Transaction Exemption (PTE) 96–23 for Plan Asset Transactions Determined by In-House Asset Managers

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Adoption of amendment to PTE 96–23.

SUMMARY: This document amends PTE 96–23, a class exemption that permits various transactions involving employee benefit plans whose assets are managed by in-house asset managers (INHAMs), provided the conditions of the exemption are met. The amendment affects participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, INHAMs, and other persons engaging in the described transactions.

DATES: The amendment is effective April 1, 2011, unless specified otherwise.

FOR FURTHER INFORMATION CONTACT: Chris Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5700, 200 Constitution Avenue NW., Washington DC 20210, (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 14, 2010, a notice was published in the **Federal Register** (75 FR 33642) of the pendency before the Department of Labor (the Department) of a proposed amendment to PTE 96–23 (61 FR 15975, April 10, 1996). PTE 96–23 provides an exemption from certain restrictions of sections 406 and 407(a) of ERISA, and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department proposed the amendment on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Description of the Proposed Amendment

In the Notice published on June 14, 2010, the Department proposed to amend PTE 96–23 in several respects, including: Expanding the definition of INHAM to include a subsidiary that is 80% or more owned by the employer or parent company; broadening the scope of Part I(e) of the class exemption to permit transactions with a "co-joint venturer" if the joint venture relationship is the entity's sole relationship to the employer (or if the co-joint venturer is both a joint venturer and a service provider); and extending relief to certain existing leases with an employer or an affiliate resulting from the plan's acquisition of the underlying office or commercial space. In the Notice, the Department further proposed to: Increase the 5% ownership threshold for related persons (the "related" to test) to 10%, and increase the amount of assets that must be managed by an INHAM, from $50 million to $85 million.

In the Notice, the Department also offered several clarifications. The Department explained that PTE 96–23: provides relief for an INHAM to act on behalf of its own plan; does not allow an INHAM to direct a QPAM to negotiate specific terms of a deal that has already been generally agreed upon by the INHAM or an employer; and may be available for a continuing transaction (e.g., a loan or lease), notwithstanding a failure to satisfy one or more of the conditions of the exemption after the transaction is entered into. The Notice also amends the exemption in accordance with the Department's views and expectations regarding the class exemption's audit and written report requirements. For a more complete discussion of the changes made to the original exemption, see the notice of pendency.

The notice of pendency gave interested persons sixty days (the comment period) to comment on the proposed amendment. While the Department did not receive any formal comments within the comment period, the Department was informally contacted and informed that some INHAMs may benefit to the extent the changes proposed for Part I(e) are made retroactive to the original effective date of PTE 96–23 (*i.e.,* April 10, 1996). The Department, after having concluded that the amendment to Part I(e) is sufficiently protective of plans on a prospective basis, believes that such conclusion is similarly applicable to a decision in favor of amending Part I(e) on a retroactive basis.

Accordingly, the Department has determined to make the amendment to Part I(e) retroactive to April 10, 1996. As noted above, the proposed amendment sets forth the Department's views and expectations regarding the exemption audit and written report. Among other things, section I(h) of the class exemption now requires that the exemption audit and written report must be completed within six months following the end of the year to which the audit relates. To remove any uncertainty regarding the completion date of the first exemption audit and written report performed after the adoption of this amendment, the Department has determined to make the amended section I(h) effective as of December 31, 2011. Accordingly, for an INHAM that operates on a calendar year basis, the exemption audit and written report attributable to the INHAM's 2011 calendar year must be completed by June 30, 2012. Where an INHAM operates on a fiscal year basis, and such fiscal year begins after January 1, 2011 (*e.g.* April 1, 2011), the exemption audit

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 214 (2000 ed.), generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

and written report must be completed within six months following the end of such fiscal year (*e.g.,* the exemption audit and written report must be completed no later than September 30, 2012).

The Department notes that the amended exemption does not provide any relief for the receipt of compensation by the INHAM or any minority owner of the INHAM in connection with the provision of investment management services to a plan maintained by the INHAM or an affiliate of the INHAM. Moreover, under section 406(b)(1) of ERISA, no INHAM may receive compensation from the plan for the provision of services in excess of direct expenses (see 29 CFR section 2550.408b-2(e)). The Department also notes that the INHAM exemption only provides relief from the restrictions of ERISA section 406(a)(1)(A) through (D) for transactions between a party in interest and a plan sponsored by the INHAM (an INHAM must be 80% or more owned by the employer or a parent corporation of such employer) or an affiliate of the INHAM. The exemption does not apply to transactions engaged in by an INHAM on behalf of other plans that are not maintained by the INHAM or affiliates of the INHAM.

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants; user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this final amendment is not "significant" under section 3(f)(4) of the Executive Order; and, therefore, it is not subject to OMB review.

Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA 95), the Department submitted the information collection request (ICR) included in the Proposed Amendment to PTE 96–23 for Plan Asset Transactions Determined by In-House Asset Managers to OMB for review and clearance at the time the Notice of the proposed exemption was published in the **Federal Register** (June 14, 2010, 75 FR 33642). OMB approved the amendment under OMB control number 1210–0145, on July 26, 2010. The approval will expire on July 31, 2013.

The Department solicited comments concerning the ICR in connection with the notice of proposed amendment. The Department received no comments addressing its burden estimates; therefore, no substantive changes have been made in the final amendment that would affect the Department's earlier burden estimates.

The paperwork burden estimates are summarized as follows:

Type of Collection: New collection (Request for new OMB Control Number).

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Final Amendment to PTE 96–23 for Plan Asset Transactions Determined by In-House Asset Managers.

OMB Control Number: new.

Affected Public: Business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 20.

Estimated Number of Annual Responses: 40 in the first year, 20 in each subsequent year.

Frequency of Response: Annually; occasionally.

Estimated Total Annual Burden Hours: 1,240 in the first year, 940 in each subsequent year.

Estimated Total Annual Burden Cost: $400,000.

Description of the Exemption

The INHAM exemption consists of four separate parts. Part I sets forth the general exemption and enumerates certain conditions applicable to the transactions described therein. The general exemption allows that portion of a plan which is managed by an INHAM to engage in all transactions described in section 406(a)(1)(A) through (D) of ERISA with virtually all party in interest service providers except the INHAM or a person related to the INHAM. The general exemption does not extend to transactions that would give rise to violations of section 406(b) of ERISA.

Part II of the exemption provides limited relief under both sections 406(a) and (b), and 407(a), of ERISA for certain transactions involving employers and their affiliates who cannot qualify for the general exemption provided by Part I. Section II(a) provides limited relief for the leasing of office or commercial space by a plan to an employer if the plan acquired the property subject to an outstanding lease with an employer or affiliate as a result of foreclosure on a mortgage or deed of trust. Section II(b) permits a plan to lease residential space to an employee of an employer any of whose employees are covered by such plan, or to any employee of a 50% or more parent or subsidiary of the employer.

Part III of the exemption provides relief from sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of ERISA for the furnishing of services, facilities and any goods incidental thereto by a place of accommodation owned by a plan managed by an INHAM to a party in interest with respect to the plan, if the services, facilities or incidental goods are furnished on a comparable basis to the general public.

Part IV contains definitions of certain terms used in the exemption.

Part V sets forth the date the changes adopted pursuant to this amendment are effective.

For the sake of convenience, the entire text of PTE 96–23 has been reprinted with this notice.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The Department finds that the amended exemption is administratively feasible, in the interests of the plan and

of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The amended exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the amendment; and

(4) The amended exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department amends PTE 96–23 as set forth below:

Part I—Basic Exemption

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to a plan (as defined in section IV(h)) and such plan, provided that an in-house asset manager (INHAM) (as defined in section IV(a)) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the plan by, or under the authority and general direction of, the INHAM, and either the INHAM, or (so long as the INHAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the INHAM, makes the decision on behalf of the plan to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount of $5,000,000 or more, which has been negotiated on behalf of the plan by the INHAM will not fail to meet the requirements of this section I(a) solely because the plan sponsor or its designee retains the right to veto or approve such transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006–16 (71 FR 63786, October 31, 2006) (relating to securities lending arrangements) (as amended or superseded);

(2) Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded); or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811, June 30, 1988) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the INHAM, the terms of the transaction are at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties;

(e) Effective April 10, 1996, the party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) either (i) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of ERISA or (ii) solely by reason of being a 10-percent or more shareholder, partner or joint venturer, in a person, which is 50 percent or more owned by an employer of employees covered by the plan (directly or indirectly in capital or profits), or the parent company of such an employer, provided that such person is not controlled by, controlling, or under common control with such employer, or (iii) by reason of both (i) and (ii) only, and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(f) The party in interest dealing with the plan is neither the INHAM nor a person related to the INHAM (within the meaning of section IV(d));

(g) The INHAM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption; and

(h) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an exemption audit (as defined in section IV(f)) on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the level of compliance: (1) With the policies and procedures adopted by the INHAM in accordance with section I(g); and (2) with the objective requirements of the exemption. The written report shall also contain the auditor's overall opinion regarding whether the INHAM's program complied: (1) With the policies and procedures adopted by the INHAM; and (2) with the objective requirements of the exemption. Effective December 31, 2011, the exemption audit and the written report must be completed within six months following the end of the year to which the audit relates.

Part II—Specific Exemptions

The restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The leasing of office or commercial space owned by a plan managed by an INHAM to an employer any of whose employees are covered by the plan or an affiliate of such employer (as defined in section 407(d)(7) of the Act), if—

(1) The plan acquires the office or commercial space subject to an existing lease with the employer or its affiliate;

(2) The lease was negotiated by a party unrelated to the employer or its affiliate;

(3) The INHAM makes the decision on behalf of the plan to acquire the office or commercial space as part of the exercise of its discretionary authority;

(4) The exemption provided for transactions engaged in with a plan pursuant to section II(a) is effective until the later of the expiration of the lease term or any renewal thereof which does not require the consent of the plan lessor;

(5) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center; and

(6) The requirements of sections I(c), I(g) and I(h) are satisfied with respect to the transaction.

(b) The leasing of residential space by a plan to a party in interest if—

(1) The party in interest leasing space from the plan is an employee of an employer any of whose employees are covered by the plan or an employee of an affiliate of such employer (as defined in section 407(d)(7) of the Act);

(2) The employee who is leasing space does not have any discretionary authority or control with respect to the investment of the assets involved in the lease transaction and does not render investment advice (within the meaning

of 29 CFR 2510.3–21(c)) with respect to those assets;

(3) The employee who is leasing space is not an officer, director, or a 10% or more shareholder of the employer or an affiliate of such employer;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the INHAM, the terms of the transaction are not less favorable to the plan than the terms afforded by the plan to other, unrelated lessees in comparable arm's length transactions;

(5) The amount of space covered by the lease does not exceed five percent (5%) of the rentable space of the apartment building or multi-unit residential subdivision [townhouses or garden apartments], and the aggregate amount of space leased to all employees of the employer or an affiliate of such employer does not exceed ten percent (10%) of such rentable space; and

(6) The requirements of sections I(a), I(c), I(d), I(g) and I(h) are satisfied with respect to the transaction.

Part III—Places of Public Accommodation

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4957(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan and managed by an INHAM to a party in interest with respect to the plan, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Part IV—Definitions

For purposes of this exemption:

(a) The term "in-house asset manager" or "INHAM" means an organization which is—

(1) Either (A) a direct or indirect 80 percent or more owned subsidiary of an employer, or a direct or indirect 80 percent more owned subsidiary of a parent organization of such an employer, or (B) a membership nonprofit corporation a majority of whose members are officers or directors of such an employer or parent organization; and

(2) An investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to plans maintained by affiliates of the INHAM (as defined in section IV(b)) in excess of $50 million; provided that if it has no prior fiscal year as a separate entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of $50 million was transferred to it from the employer. Effective as of the last day of the first fiscal year of the investment adviser beginning on or after the date of publication of this adopted amendment in the **Federal Register**, substitute "$85 million" for "$50 million" in (a)(2) of section IV above.

In addition, plans maintained by affiliates of the INHAM and/or the INHAM must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million.

(b) For purposes of sections IV(a) and IV(h), an "affiliate" of an INHAM means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which the INHAM is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which the INHAM is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) or the rules thereunder.

(c) The term "party in interest" means a person described in the Act section 3(14) and includes a "disqualified person" as defined in Code section 4975(e)(2).

(d) An INHAM is "related" to a party in interest for purposes of section I(f) of this exemption if, as of the last day of its most recent calendar quarter: (i) The INHAM (or a person controlling, or controlled by, the INHAM) owns a ten percent or more interest in the party in interest; or (ii) the party in interest (or a person controlling, or controlled by, the party in interest) owns a ten percent or more interest in the INHAM. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after April 10, 1996, or any renewal that requires the consent of the INHAM occurs on or after April 10, 1996, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(f) Exemption Audit. An "exemption audit" of a plan must consist of the following:

(1) A review of the written policies and procedures adopted by the INHAM pursuant to section I(g) for consistency with each of the objective requirements of this exemption (as described in section IV(g)).

(2) A test of a sample of the INHAM's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis: (A) To make specific findings regarding whether the INHAM is in compliance with (i) the written policies and procedures adopted by the INHAM pursuant to section I(g) of the exemption and (ii) the objective requirements of the exemption; and (B) to render an overall opinion regarding the level of compliance of the INHAM's program

with section IV(f)(2)(A)(i) and (ii) of the exemption.

(3) A determination as to whether the INHAM satisfied the definition of an INHAM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(g) For purposes of section IV(f), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by the INHAM to assure compliance with each of these requirements:

(1) The definition of an INHAM in section IV(a).

(2) The requirements of Part I and section I(a) regarding the discretionary authority or control of the INHAM with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the plan to enter into the transaction.

(3) That any procedure for approval or veto of the transaction meets the requirements of section I(a).

(4) For a transaction described in Part I:

(A) That the transaction is not entered into with any person who is excluded from relief under section I(e)(1), section I(e)(2), to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or section I(f), and

(B) That the transaction is not described in any of the class exemptions listed in section I(b).

(5) For a transaction described in Part II:

(A) If the transaction is described in section II(a),

(i) That the transaction is with a party described in section II(a);

(ii) That the transaction occurs under the circumstances described in section II(a)(1), (2) and (3);

(iii) That the transaction does not extend beyond the period of time described in section II(a)(4); and

(iv) That the percentage test in section II(a)(5) has been satisfied or

(B) If the transaction is described in section II(b),

(i) That the transaction is with a party described in section II(b)(1);

(ii) That the transaction is not entered into with any person excluded from relief under section II(b)(2) to the extent such person has discretionary authority or control over the plan assets involved in the lease transaction or section II(b)(3); and

(iii) That the percentage test in section II(b)(5) has been satisfied.

(h) The term "plan" means a plan maintained by the INHAM or an affiliate of the INHAM.

Part V—Effective Date

This amendment to the class exemption is effective April 1, 2011, unless specified otherwise.

Signed at Washington, DC, this 25th day of March 2011.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2011–7655 Filed 3–31–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Michigan

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB program for Michigan.

The following changes have occurred since the publication of the last notice regarding the State's EB status:

• Based on data released by the Bureau of Labor Statistics on March 10, 2011, Michigan no longer meets the 110% criteria to remain "on" in the EB program. As a result, the payable period for Michigan in the EB program will conclude April 2, 2011.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 28th day of March 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–7659 Filed 3–31–11; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement Regarding Delaware Triggering "on" Tier Four of Emergency Unemployment Compensation 2008 (EUC08)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Announcement regarding Delaware triggering "on" Tier Four of Emergency Unemployment Compensation 2008 (EUC08).

Public Law 111–312 extended provisions in Public Law 111–92 which amended prior laws to create a Third and Fourth Tier of benefits within the EUC08 program for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which states qualify for EUC08 benefits within Tiers Three and Four and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notice covering state eligibility for the EUC08 program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

Based on data published March 10, 2011, by the Bureau of Labor Statistics, the following trigger change has occurred for Delaware in the EUC08 program:

• The seasonally-adjusted total unemployment rate for the 3-month period ending January 2011 for Delaware rose to meet or exceed the 8.5% threshold to be "on" Tier Four of the EUC08 program. As a result, the payable period for Delaware in Tier Four of the EUC08 program will begin March 27, 2011, and the maximum

potential entitlement of 34 weeks will increase to a maximum potential entitlement of 47 weeks in the EUC08 program.

Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205 and 111–312, and the operating instructions issued to the states by the U.S. Department of Labor. Persons who believe they may be entitled to additional benefits under the EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 28th day of March 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–7658 Filed 3–31–11; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement Regarding Pennsylvania Triggering "Off" Tier Four of Emergency Unemployment Compensation 2008 (EUC08).

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Announcement regarding Pennsylvania's triggering "off" Tier Four of Emergency Unemployment Compensation 2008 (EUC08).

Public Law 111–312 extended provisions in Public Law 111–92 which amended prior laws to create a Third and Fourth Tier of benefits within the EUC08 program for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which states qualify for EUC08 benefits within Tiers Three and Four and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notice covering state eligibility for the EUC08 program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

Based on data published March 10, 2011, by the Bureau of Labor Statistics, the following trigger change has occurred for Pennsylvania in the EUC08 program:

- The seasonally-adjusted total unemployment rate for the 3-month period ending January 2011 for Pennsylvania fell below the 8.5% threshold to remain "on" Tier Four of the EUC08 program. As a result, the payable period for Pennsylvania in Tier Four of the EUC08 program will conclude April 2, 2011, and the maximum potential entitlement of 47 weeks will decrease to a maximum potential entitlement of 34 weeks in the EUC08 program.

Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205 and 111–312, and the operating instructions issued to the states by the U.S. Department of Labor. Persons who believe they may be entitled to additional benefits under the EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 28th day of March 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–7657 Filed 3–31–11; 8:45 am]

BILLING CODE 4510–FW–P

OFFICE OF MANAGEMENT AND BUDGET

Draft 2011 Report to Congress on the Benefits and Costs of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability and request for comments.

SUMMARY: The Office of Management and Budget (OMB) requests comments on its Draft 2011 Report to Congress on the Benefits and Costs of Federal Regulations. The Draft Report is divided into four chapters. Chapter I examines the benefits and costs of major Federal regulations issued in fiscal year 2010 and summarizes the benefits and costs of major regulations issued between October 2000 and September 2010. It also discusses regulatory impacts on State, local, and Tribal governments, small business, wages, and economic growth. Chapter II offers recommendations for regulatory reform. Chapter III provides an update on implementation of the Information Quality Act. Chapter IV summarizes agency compliance with the Unfunded Mandates Reform Act.

DATES: To ensure consideration of comments as OMB prepares the final version of this draft Report for submission to Congress, comments must be in writing and received by May 16, 2011. Comments on retrospective analysis studies are particularly appreciated by May 2, 2011.

ADDRESSES: Submit comments by one of the following methods:

- *E-mail:*
  - For comments on the Draft 2011 Report to Congress on the Benefits and Costs of Federal Regulations: *cb-report@omb.eop.gov.*
  - For comments on retrospective analysis studies: *retro-analysis@omb.eop.gov.* Suggestions about particular rules that should be reevaluated, as well as studies of particular rules, should be directed to the agencies themselves.
- *Fax:* (202) 395–7285.
- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10102, 725 17th Street, NW., Washington, DC 20038. We are still experiencing delays in the regular mail, including first class and express mail. To ensure that your comments are received, we recommend that comments on this draft report be electronically submitted.

All comments and recommendations submitted in response to this notice will be made available to the public, including by posting them on OMB's Web site. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10102, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–3741.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Costs and Benefits of Federal Regulations. Specifically, Section 624 of the FY 2001 Treasury and General Government Appropriations Act, also known as the "Regulatory Right-to-Know Act," (the Act) requires OMB to submit a report on the costs and benefits of Federal regulations together with recommendation for reform. The Act states that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and Tribal governments, small businesses, wages, and economic growth. The Act also states that the report should be subject to notice and comment and peer review.

In this draft Report, available at: *http://www.whitehouse.gov/omb/inforeg_regpol_reports_congress/,* OMB offers the following recommendations:

1. Consistent with Executive Order 13563, regulatory decisions and priority-setting should be made in a way that is attentive to the importance of promoting economic growth, innovation, job creation, and competitiveness.
2. Agencies should accompany all economically significant regulations with (1) a tabular presentation, placed prominently and offering a clear statement of qualitative and quantitative benefits and costs of the proposed or planned action, together with (2) a presentation of uncertainties and (3) similar information for reasonable alternatives to the proposed or planned action.
3. Agencies should continue to use "breakeven analysis" when quantification is not possible, with such analysis defined as the specification of how high the unquantified or unmonetized benefits would have to be in order for the benefits to justify the costs.
4. Consistent with OMB Circular A–4, for regulations intended to reduce mortality risks, agencies should consider the use of cost-effectiveness analysis and, specifically, the development of estimates for the "net cost per life saved."
5. Consistent with Executive Order 13563, and in particular the emphasis on "the open exchange of information and perspectives among state, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole," agencies should promote public participation and transparency through the use of regulations.gov and other technological means.
6. In order to promote trade and exports, agencies should promote regulatory cooperation initiatives alongside key trading partners.

Consistent with Executive Order 13563, OMB is especially interested in how to improve retrospective analysis of existing rules. OMB requests information about published and unpublished studies, conceptual and empirical, involving such retrospective analysis. OMB also requests suggestions about how to improve understanding of the accuracy of prospective analyses of rules and how to undertake retrospective analysis. Methodological suggestions are particularly welcome. Suggestions about particular rules that should be reevaluated, as well as studies of particular rules, should be directed to the agencies themselves.

Cass R. Sunstein,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2011–7504 Filed 3–29–11; 4:15 pm]

BILLING CODE 3110–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–156; NRC–2010–0203]

University of Wisconsin; Notice of Issuance of Renewed Facility License No. R–74

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has issued renewed Facility License No. R–74, held by the University of Wisconsin (the licensee), which authorizes continued operation of the University of Wisconsin Nuclear Reactor (UWNR), located in Madison, Dane County, Wisconsin. The UWNR is a pool-type, light-water-moderated and cooled TRIGA (Training, Research, Isotope Production, General Atomics) reactor licensed to operate at a steady-state power levels up to and including 1 megawatt thermal and short duration power pulses with reactivity insertions up to 1.4% $\Delta k/k$. The renewed Facility License No. R–74 will expire at midnight 20 years from its date of issuance.

The renewed facility license 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 regulations in Title 10, Chapter 1, "Nuclear Regulatory Commission," of the *Code of Federal Regulations* (10 CFR), and sets forth those findings in the renewed facility license. The agency afforded an opportunity for hearing in the Notice of Opportunity for Hearing published in the **Federal Register** on June 18, 2010 (75 FR 34769–34774). The NRC received no request for a hearing or petition for leave to intervene following the notice.

The NRC staff prepared a safety evaluation report for the renewal of Facility License No. R–74 and concluded, based on that evaluation, the licensee can continue to operate the facility without endangering the health and safety of the public. The NRC staff also prepared an Environmental Assessment and Finding of No Significant Impact for the renewal of the facility license, noticed in the **Federal Register** on September 16, 2010 (75 FR 56597–56601), and concluded that renewal of the facility license will not have a significant impact on the quality of the human environment.

For details with respect to the application for renewal, see the licensee's letter dated May 9, 2000 (ML093570404), as supplemented on September 7, 2004 (ML093570441); October 17, 2008 (ML100740573); June 16, 2010 (two letters, ML101690137 and ML101690083), July 8, 2010 (ML102110051), August 11, 2010 (ML102320209), November 22, 2010 (ML103300040), December 8, 2010 (ML103480028); January 28, 2011 (ML110340310), and February 8, 2011 (ML110410534). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on 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 Referencestaff at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of March 2011.

For the Nuclear Regulatory Commission

Jessie Quichocho,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–7720 Filed 3–31–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0277]

Notice of issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 1.44, Revision 1, "Control of the Processing and Use of Stainless Steel."

FOR FURTHER INFORMATION CONTACT: Gary L. Stevens, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7569 or e-mail *Gary.Stevens@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.44, "Control of the Processing and Use of Stainless Steel," was issued with a temporary identification as Draft Regulatory Guide, DG–1224. This guide describes methods that the staff of the NRC considers acceptable for implementing requirements about control of the application and processing of stainless steel to avoid severe sensitization that could lead to stress-corrosion cracking. This guide applies to light-water-cooled reactors.

II. Further Information

In June 2009, DG–1224 was published with a public comment period of 60 days from the issuance of the guide. The public comment period was extended until October 1, 2009. The staff's responses to the comments received are located in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML101680258. Electronic copies of Regulatory Guide 1.44, Revision 1 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.* The regulatory analysis may be found under ADAMS Accession No. ML101680238.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 24th day of March 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–7721 Filed 3–31–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

January 2011 Pay Schedules

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The President has signed an Executive order stating that certain civilian employee pay schedules are not adjusted in 2011 and remain at 2010 levels. This notice serves as documentation for the public record.

FOR FURTHER INFORMATION CONTACT: Lisa Dismond, Pay and Leave, Employee Services, U.S. Office of Personnel Management; (202) 606–2858; FAX (202) 606–0824; or email to *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On December 22, 2010, the President signed Executive Order 13561 (75 FR 81817), which documented the January 2011 pay schedules. Pursuant to Public Law 111–242, as amended by Public Law 111–322, December 22, 2010, the Executive order provides that 2011 pay rates for the civilian employee pay schedules covered by the order are not adjusted and remain at 2010 levels.

Schedule 1 of Executive Order 13561 provides the rates for the 2011 General Schedule (GS) and reflects no increase from 2010. Executive Order 13561 also includes the percentage amounts of the 2011 locality payments, which remain at 2010 levels except for employees in nonforeign areas. (*See* Section 5 and Schedule 9 of Executive Order 13561.)

The publication of this notice satisfies the requirement in section 5(b) of Executive Order 13561 that the U.S. Office of Personnel Management (OPM) publish appropriate notice of the 2011 locality payments in the **Federal Register**.

GS employees receive locality payments under 5 U.S.C. 5304. Locality payments apply in the United States (as defined in 5 U.S.C. 5921(4)) and its territories and possessions. In 2011, locality payments ranging from 9.44 percent to 35.15 percent apply to GS employees in the 34 locality pay areas. The 2011 locality pay area definitions can be found at *http://www.opm.gov/oca/11tables/locdef.asp.*

The 2011 locality pay percentages became effective on the first day of the first pay period beginning on or after January 1, 2011 (January 2, 2011). An employee's locality rate of pay is computed by increasing his or her scheduled annual rate of pay (as defined in 5 CFR 531.602) by the applicable locality pay percentage. (*See* 5 CFR 531.604 and 531.609.) The Non-Foreign Area Retirement Equity Assurance Act of 2009 contained in subtitle B (sections 1911–1919) of title XIX of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84, October 28, 2009) extended coverage of the locality pay program to employees in Alaska, Hawaii, and the other nonforeign areas in 2010. For 2011, the statute provides that employees in each of these areas receive two-thirds of the applicable locality rate.

Executive Order 13561 documents that the Executive Schedule rates of pay remain at the 2010 levels. By law, Executive Schedule officials are not authorized to receive locality payments.

Executive Order 13561 documents the 2011 range of rates of basic pay for senior executives in the Senior Executive Service (SES) under 5 U.S.C. 5382. The minimum rate of basic pay for the SES remains at $119,554 in 2011. The maximum rate of the SES rate range continues to be $179,700 (level II of the Executive Schedule) for SES members covered by a certified SES performance appraisal system and $165,300 (level III of the Executive Schedule) for SES members covered by an SES performance appraisal system that has not been certified.

The minimum rate of basic pay for the senior-level (SL) and scientific and

professional (ST) rate range remains at $119,554 in 2011. The applicable maximum rate of the SL/ST rate range continues to be $179,700 (level II of the Executive Schedule) for SL or ST employees covered by a certified SL/ST performance appraisal system and $165,300 (level III of the Executive Schedule) for SL or ST employees covered by an SL/ST performance appraisal system that has not been certified. Agencies with certified performance appraisal systems in 2011 for SES members and employees in SL and ST positions also must apply a higher aggregate limitation on pay—up to the Vice President's salary ($230,700 in 2011, the same level as in 2010).

By law, SES members and employees in SL and ST positions are not authorized to receive locality payments. Note: An exception applies to SES, SL, and ST employees stationed in a nonforeign area on January 2, 2010, which is explained in an OPM memorandum, CPM 2009–27. (*See http://www.opm.gov/oca/compmemo/index.asp.*)

Executive Order 13561 provides that the rates of basic pay for administrative law judges (ALJs) under 5 U.S.C. 5372 are not increased in 2011. The rate of basic pay for AL–1 remains at $155,500 (equivalent to the rate for EX–IV). The rate of basic pay for AL–2 remains at $151,800. The rates of basic pay for AL–3/A through 3/F continue to range from $103,900 to $143,700.

The rates of basic pay for members of Contract Appeals Boards are calculated as a percentage of the rate for level IV of the Executive Schedule. (*See* 5 U.S.C. 5372a.) Therefore, these rates of basic pay are not increased in 2011.

On December 13, 2010, the President's Pay Agent extended locality-based comparability payments to certain categories of non-GS employees again in 2011. The Governmentwide categories include ALJs and Contract Appeals Board members. The maximum locality rate of pay for these employees is the rate for level III of the Executive Schedule ($165,300 in 2011, the same level as in 2010).

On December 27, 2010, OPM issued a memorandum (CPM 2010–20) on the Executive order for the 2011 pay schedules. (*See http://www.opm.gov/oca/compmemo/index.asp.*) The memorandum transmitted Executive Order 13561 and provided the 2011 salary tables, locality pay areas and percentages, and information on general pay administration matters and other related information. The "2011 Salary Tables" posted on OPM's Web site at *http://www.opm.gov/oca/11tables/index.asp* are the official rates of pay for affected employees and are hereby incorporated as part of this notice.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–7672 Filed 3–31–11; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Scheduling of council meeting.

SUMMARY: The Hispanic Council on Federal Employment will hold its second meeting on April 15, 2011, at the time and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Assistant Secretary for Human Resources and Administration at the Department of Veterans Affairs.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: April 15, 2011 from 2–4 p.m.

Location: U.S. Office of Personnel Management, Room 1416, 1st Floor, Theodore Roosevelt Building, 1900 E St., NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St., NW., Suite 5305, Washington, DC 20415. Phone (202) 606–2984 FAX (202) 606–2183 or e-mail at *Edgar.Gonzalez@opm.gov.*

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–7830 Filed 3–31–11; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ac3–1(a); SEC File No. 270–96; OMB Control No. 3235–0151.

Form TA–W(1669); SEC File No. 270–96; OMB Control No. 3235–0151.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in the following rule: Rule 17Ac3–1(a) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 17A(c)(4)(B) of the Exchange Act authorizes transfer agents registered with an appropriate regulatory agency ("ARA") to withdraw from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions as the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of Section 17A.

In order to implement Section 17A(c)(4)(B) of the Exchange Act the Commission, on September 1, 1977, promulgated Rule 17Ac3–1(a) (17 CFR 240.17Ac3–1(a)) and accompanying Form TA–W (17 CFR 249b.101). Rule 17Ac3–1(a) provides that notice of withdrawal from registration as a transfer agent with the Commission shall be filed on Form TA–W. Form TA–W requires the withdrawing transfer agent to provide the Commission with certain information, including: (1) The locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

The Commission uses the information disclosed on Form TA–W to determine whether the registered transfer agent applying for withdrawal from registration as a transfer agent should be allowed to deregister and, if so, whether the Commission should attach to the granting of the application any terms or conditions necessary or appropriate in

the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A of the Exchange Act. Without Rule 17Ac3–1(a) and Form TA–W, transfer agents registered with the Commission would not have a means to voluntarily deregister when necessary or appropriate to do so.

Respondents file approximately 50 TA–Ws with the Commission annually. A Form TA–W filing occurs only once, when a transfer agent is seeing deregistration. Approximately 80 percent of Form TA–Ws are completed by the transfer agent or its employees and approximately 20 percent of Forms TA–W are completed by an outside filing agent that is hired by the registrant to prepare the form and file it electronically. In view of the readily-available information requested by Form TA–W, its short and simple presentation, and the Commission's experience with the filers, we estimate that approximately 30 minutes is required to complete and file Form TA–W, which consists primarily of external labor costs plus a nominal and unquantifiable amount of computer operations/maintenance cost (because the Form must be filed electronically through the Commission's EDGAR system). For transfer agents that complete Form TA–W themselves, we estimate the cost per filing is $25 (.5 hours times $50 average hourly rate for clerical staff time), which is an internal labor cost. We estimate that outside filing agents charge $100 to complete and file a TA–W on behalf of a registrant, reflecting an external cost to respondents.

Written comments are invited on: (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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 28, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7690 Filed 3–31–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c2–11; SEC File No. 270–196; OMB Control No. 3235–0202.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 15c2–11, (17 CFR 240.15c2–11), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

On September 13, 1971, effective December 13, 1971 (*see* 36 FR 18641, September 18, 1971), the Commission adopted Rule 15c2–11 ("Rule 15c2–11" or "Rule") under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to regulate the initiation or resumption of quotations in a quotation medium by a broker-dealer for over-the-counter ("OTC") securities. The Rule was designed primarily to prevent certain manipulative and fraudulent trading schemes that had arisen in connection with the distribution and trading of unregistered securities issued by shell companies or other companies having outstanding but infrequently traded securities. Subject to certain exceptions, the Rule prohibits brokers-dealers from publishing a quotation for a security, or submitting a quotation for publication, in a quotation medium unless they have reviewed specified information concerning the security and the issuer.

Based on information provided by Financial Industry Regulatory Authority, Inc. ("FINRA"), in the 2010 calendar year, FINRA received approximately 1,798 applications from broker-dealers to initiate or resume publication of covered OTC securities in the OTC Bulletin Board and/or the Pink Sheets or other quotation mediums. We estimate that (i) 41% of the covered OTC securities were issued by reporting issuers, while the other 59% were issued by non-reporting issuers, and (ii) it will take a broker-dealer about 4 hours to review, record and retain the information pertaining to a reporting issuer, and about 8 hours to review, record and retain the information pertaining to a non-reporting issuer.

We therefore estimate that broker-dealers who initiate or resume publication of quotations for covered OTC securities of reporting issuers will require 2,949 hours (1,798 × 41% × 4) to review, record and retain the information required by the Rule. We estimate that broker-dealers who initiate or resume publication of quotations for covered OTC securities of non-reporting issuers will require 8,487 hours (1,798 × 59% × 8) to review, record and retain the information required by the Rule. Thus, we estimate the total annual burden hours for broker-dealers to initiate or resume publication of quotations of covered OTC securities to be 11,436 hours (2,949 + 8,487). The Commission believes that these 11,436 hours would be completed by staff working at a rate of $40 per hour.[1]

Subject to certain exceptions, the Rule prohibits brokers-dealers from publishing a quotation for a security, or submitting a quotation for publication, in a quotation medium unless they have reviewed specified information concerning the security and the issuer. The broker-dealer must also make the information reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer. The collection of information that is submitted to FINRA for review and approval is currently not available to the public from FINRA.

Written comments are invited on: (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 estimates of the burden of the proposed

[1] *See* Appendix C, SIFMA Office Salaries Data—Sept. 2007 for General Clerk national hourly rate.

collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 28, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7689 Filed 3–31–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29619; File No. 812–13854]

Fairholme VP Series Fund, Inc. and Fairholme Capital Management LLC

March 28, 2011.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended, (the "Act") granting relief from the provisions of Section 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Fairholme VP Series Fund, Inc. (the "Fund") and Fairholme Capital Management LLC. ("FCM") (together the "Applicants").

FILING DATE: The application was filed on December 23, 2010, and an amended and restated application was filed on March 22, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2011 and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Applicants: Bruce R. Berkowitz Fairholme Capital Management, LLC, 4400 Biscayne Blvd., Miami, FL 33137, with a copy to Paul M. Miller, Esq., Seward & Kissel LLP, 1200 G Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Patrick Scott, Senior Counsel, at 202–551–6763, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, Commission SEC at (202) 551–6975.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549 (tel. (202) 551–8090).

SUMMARY OF APPLICATION: Applicants seek exemption of each life insurance company separate account supporting variable life insurance contracts ("VLI Accounts") (and its insurance company depositor) that may invest in shares of the Fund or a "future fund" as defined below, from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) (or any comparable provisions of a permanent rule that replaces Rule 6e–3(T)(b)(15)) thereunder to the extent necessary to permit such VLI Accounts to hold shares of the Fund or a future fund when one or more of the following other types of investors also hold shares of the Fund or a future fund: (1) Life insurance company separate accounts supporting variable annuity contracts ("VA Accounts"), whether or not the life insurance company is an affiliated person of the insurance company depositor of any VLI Account, (2) VLI Accounts supporting scheduled or flexible premium variable life insurance contracts, whether or not the life insurance company is an affiliated person of the insurance company depositor of any other VLI Account, (3) general accounts of insurance company depositors of VA Accounts and/or VLI Accounts, (4) the Fund's investment adviser or future fund's investment adviser (or an affiliated person of the investment adviser), or (5) qualified group pension plans and group retirement plans ("Plans") in accordance with Section 817(h) of the Internal Revenue Code (the "Code") outside the separate account context. A "future fund" is any investment company (or investment portfolio or series thereof), other than the Fund, shares of which are sold to VLI Accounts and to which NYLIM or its affiliates may in the future serve as investment adviser, investment subadviser, investment manager, administrator, principal underwriter or sponsor. Investment portfolios or series of the Fund or any future fund are referred to herein as "Insurance Funds."

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549, (202) 551–8090.

Applicants' Representations

1. The Fund was formed as a Maryland corporation on October 14, 2010. The Fund is registered under the Act as an open-end management investment company (Reg. File No. 811–22490). The Fund is a series investment company as defined by Rule 18f–2 under the Act and is currently comprised of three series (the "Portfolios"): (1) Fairholme VP Portfolio, (2) Fairholme VP Focused Income Portfolio and (3) Fairholme VP Allocation Portfolio. The Fund issues a separate series of shares of common stock for each Existing Fund and intends to file a registration statement under the Securities Act of 1933 (the "1933 Act") on Form N–1A to register such shares. The Fund may establish additional Portfolios in the future and additional classes of shares for such Insurance Funds.

2. The Fund may offer its shares to both VLI Accounts and VA Accounts (together, "Accounts") of life insurance companies in reliance on an order from the Commission. Applicants seek relief so that the Fund (and future funds) may offer each series of their shares to: (a) VLI Accounts and VA Accounts of both affiliated and unaffiliated life insurance companies; (b) insurance company depositors of VLI Accounts and/or VA Accounts investing in one or more Insurance Funds through their general accounts; (c) FCM and any other investment advisers to one or more

Insurance Funds (or their affiliates); and (d) Plans.

3. Each VLI Account and VA Account is or will be established as a segregated asset account by an insurance company affiliated or not affiliated with FCM (life insurance companies affiliated with FCM and life insurance companies not affiliated with FCM are each referred to as a "Participating Insurance Company" and collectively as the "Participating Insurance Companies") pursuant to the insurance law of the insurance company's state of domicile. As such, the assets of each will be the property of the Participating Insurance Company, and that portion of the assets of such an Account equal to the reserves and other contract liabilities with respect to the Account will not be chargeable with liabilities arising out of any other business that the insurance company may conduct. The income, gains and losses, realized or unrealized from such an Account's assets will be credited to or charged against the Account without regard to other income, gains or losses of the Participating Insurance Company. If a VLI Account or VA Account is registered as an investment company, it will be a "separate account" as defined by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the life insurance company that establishes such a registered VLI Account or VA Account is the depositor and sponsor of the Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

4. FCM serves as the investment manager to the Fund and each of its Portfolios. FCM is a Delaware limited liability company and is registered as an investment manager under the Investment Advisers Act of 1940. Under the supervision of the Fund's board of directors, FCM is responsible for all investment decisions for the Funds.

5. The Fund proposes to offer and sell its shares (and a future fund would offer and sell its shares) to VLI Accounts and VA Accounts of various Participating Insurance Companies as an investment medium to support variable life insurance contracts ("VLI Contracts") and variable annuity contracts ("VA Contracts") (together, "Variable Contracts") issued through such Accounts. As described more fully below, the Fund (or a future fund) will only sell its shares to registered VLI Accounts and registered VA Accounts if each Participating Insurance Company sponsoring such a VLI or VA Account enters into a participation agreement with the Insurance Fund (or a future fund). The participation agreements define or will define the relationship between each Insurance Fund and each Participating Insurance Company and memorialize or will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the Participating Insurance Company will remain responsible for establishing and maintaining any VLI or VA Account covered by the agreement and for complying with all applicable requirements of state and federal law pertaining to such Accounts and to the sale and distribution of variable contracts issued through such Accounts. The participation agreements also memorialize or will memorialize, among other matters, the fact that, unless the agreement specifically states otherwise, the Fund (or a future fund) will remain responsible for establishing and maintaining any Insurance Fund covered by the agreement, for complying with all applicable requirements of state and federal law pertaining to such Insurance Funds and to the offer and sale of its shares to VLI Accounts and VA Accounts covered by the agreement, and for compliance with the conditions stated in the application.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI Accounts and VA Accounts of the same Participating Insurance Company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as "mixed funding." The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts and/or VA Accounts of two or more Participating Insurance Companies that are not affiliated persons of each other, is referred to herein as "shared funding."

7. The Insurance Fund (or a future fund) may sell its shares directly to the Plans. As described below, federal tax law permits investment companies such as the Insurance Funds to increase their net assets by selling shares to Plans.

8. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Insurance Fund. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) that established diversification requirements for Variable Contracts, which require the separate accounts upon which these Contracts are based to be diversified as provided in the Treasury Regulations. In the case of separate accounts that invest in underlying investment companies, the Treasury Regulations provide a "look through" rule that permits the separate account to look to the underlying investment company for purposes of meeting the diversification requirements, provided that the beneficial interests in the investment company are held only by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which permits shares in an investment company to be held by a Plan without adversely affecting the ability of shares in the same investment company to also be held by separate accounts funding Variable Contracts (Treas. Reg. Section 1.817–5(f)(3)(iii)). Another exception allows the investment adviser of the investment company (and certain companies related to the investment adviser) to hold shares of the investment company.

9. Plans may invest in shares of an investment company as the sole investment under the Plan, or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. The trustees or other fiduciaries of a Plan may vote investment company shares held by the Plan in their own discretion or, if the applicable Plan so provides, vote such shares in accordance with instructions from participants in such Plans. Applicants have no control over whether trustees or other fiduciaries of Plans, rather than participants in the Plans, have the right to vote under any particular Plan. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustees or other fiduciaries. To the extent permitted under applicable law, FCM or an affiliated person of FCM may act as investment adviser or trustee to Plans that purchase shares of any Insurance Fund.

10. Applicants propose that any Insurance Fund also be permitted to sell shares to its investment adviser or an affiliate. The Treasury Regulations permit such sales as long as the return on shares held by the adviser or affiliate is computed in the same manner as shares held by VLI Accounts and VA Accounts, the adviser or affiliate does not intend to sell the shares to the public, and sales to an adviser or affiliate are only made in connection with the creation of the Insurance Fund.

11. Applicants propose that any Insurance Fund also be permitted to sell shares to the general account of a Participating Insurance Company. The Treasury Regulations also permit such sales as long as the return on shares held by general accounts are computed in the same manner as shares held by VLI Accounts and VA Accounts, and the Participating Insurance Company does not intend to sell the shares to the public.

12. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations permitting the shares of Insurance Funds to be held by a Plan, an adviser for the Insurance Fund, or the general account of a Participating Insurance Company without adversely affecting the ability of the VLI Account to also hold shares.

13. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts, VA Accounts, Plans, investment advisers and general accounts of Participating Insurance Companies is referred to herein as "extended mixed funding."

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any investment company, including a unit investment trust, if an affiliated person of that company is subject to disqualification enumerated in Section 9(a)(1) or (2) of the Act. Sections 13(a), 15(a), and 15(b) of the Act have been deemed by the Commission to require "pass-through" voting with respect to an underlying investment company's shares.

2. Rule 6e–2(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting scheduled premium VLI Contracts and to their life insurance company depositors. The exemptions granted by the Rule are available, however, only where an Insurance Fund offers its shares exclusively to VLI Accounts of the same Participating Insurance Company and/or of Participating Insurance Companies that are affiliated persons of the same Participating Insurance Company and then, only where scheduled premium VLI Contracts are issued through such VLI Accounts. Therefore, VLI Accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e–2(b)(15) if shares of the Insurance Fund are held by a VLI Account through which flexible premium VLI Contracts are issued, a VLI Account of an unaffiliated Participating Insurance Company, an unaffiliated investment adviser, any VA Account or a Plan. In other words, Rule 6e–2(b)(15) does not permit a scheduled premium VLI Account to invest in shares of a management investment company that serves as a vehicle for mixed funding, extended mixed funding or shared funding.

3. Accordingly, Applicants request an order of the Commission granting exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit a scheduled premium VLI Account to hold shares of Insurance Funds when one or more of the following types of investors also hold shares of the Insurance Funds: (1) VA Accounts, (2) VLI Accounts supporting flexible premium VLI Contracts, (3) VA Accounts or VLI Accounts of Participating Insurance Companies that are not affiliated persons of the depositor of the scheduled premium VLI Account, (4) general accounts of Participating Insurance Companies, (5) investment advisers (or affiliated persons of an investment adviser) of an Insurance Fund, or (6) Plans.

4. Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors. The exemptions granted by the Rule are available, however, only where an Insurance Fund offers its shares exclusively to VLI Accounts (through which either scheduled premium or flexible premium VLI Contracts are issued) of the same Participating Insurance Company and/or of Participating Insurance Companies that are affiliated persons of the same Participating Insurance Company, VA Accounts of the same Participating Insurance Company or of affiliated Participating Insurance Companies, or the general account of the same Participating Insurance Company or of affiliated Participating Insurance Companies. Therefore, VLI Accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e–3(T)(b)(15) if shares of the Insurance Fund are held by a VLI Account of an unaffiliated Participating Insurance Company, a VA Account of an unaffiliated Participating Insurance Company, the general account of an unaffiliated Participating Insurance Company, an unaffiliated investment adviser, or a Plan. In other words, Rule 6e–3(T)(b)(15) permits VLI Accounts supporting flexible premium VLI Contracts to invest in shares of a management investment company that serves as a vehicle for mixed funding but does not permit such a VLI Account to invest in shares of a management investment company that serves as a vehicle for extended mixed funding or shared funding.

5. Accordingly, Applicants request an order of the Commission granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rule 6e–3(T)(b)(15) (and any comparable permanent rule) thereunder, to the extent necessary to permit a flexible premium VLI Account to hold shares of Insurance Funds when one or more of the following types of investors also hold shares of the Insurance Funds: (1) VA Accounts or VLI Accounts of Participating Insurance Companies that are not affiliated persons of the depositor of the flexible premium VLI Account, (2) general accounts of Participating Insurance Companies, (3) investment advisers (or affiliated persons of an investment adviser) of an Insurance Fund, or (4) Plans.

6. As explained below, Applicants maintain that there is no public policy reason why VLI Accounts and their Participating Insurance Company depositors (or principal underwriters) should not be able to rely on the exemptions provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) just because shares of Insurance Funds held by the VLI Accounts are also held by an Insurance Fund's investment adviser (or affiliated person), the general account of the Participating Insurance Company (or another Participating Insurance Company), or a Plan ("Eligible 817(h) Purchasers"). Rather, Applicants assert that the proposed sale of Insurance Fund shares to Plans may allow for the development of larger pools of assets, resulting in the potential for greater investment and diversification opportunities and decreased expenses at higher asset levels. Similarly, Applicants believe that the proposed sale of Insurance Fund shares to investment advisers (or their affiliates) and to general accounts of Participating Insurance Companies may result in the creation of more Insurance Funds as investment options for certain VA Contracts and VLI Contracts than would otherwise be the case.

7. Applicants understand that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to issues such as conflicts

of interest. Applicants believe, however, that the Commission's concern in this area is not warranted here. For the reasons explained below, Applicants have concluded that investment by Eligible 817(h) Purchasers in the Insurance Funds should not increase the risk of material irreconcilable conflicts between owners of VLI Contracts and other types of investors or between owners of VLI Contracts issued by unaffiliated Participating Insurance Companies.

8. Consistent with the Commission's authority under Section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request exemptions for a class of parties consisting of VLI Accounts, their Participating Insurance Company depositors and their principal underwriters. There is ample precedent, in a variety of contexts, for the Commission to grant exemptions to a carefully defined class of persons or parties where the specific identities of all such persons or parties cannot be ascertained at the time an application for the exemptions is filed. Likewise, there is ample precedent for parties not seeking to rely on the exemptions to apply for such exemptions in order to further their reasonable business purposes.

9. In the context of mixed funding, extended mixed funding and shared funding, the Commission has granted numerous orders of exemption covering a class composed of registered VLI Accounts, their insurance company depositors and principal underwriters. The order sought is largely identical to these precedents with respect to the scope of the exemptions and the conditions proposed by the Applicants. Applicants believe that the same policies and considerations that led the Commission to grant such exemptions to other similarly situated applicants are present here.

10. Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The Applicants submit that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

11. Section 9(a)(3) of the Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed funding, extended mixed funding and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying investment company.

12. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person that is disqualified under Sections 9(a)(1) or (2) of the Act to serve as an officer, director, or employee of the life insurance company, or any of its affiliates, as long as that person does not participate directly in the management or administration of the underlying investment company. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the Act permits the life insurance company to serve as the underlying investment company's investment manager or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participates in the management or administration of the investment company.

13. In effect, the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act from the requirements of Section 9 of the Act limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to all individuals in a large insurance complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as investment vehicles for VLI Accounts and VA Accounts. There is no regulatory purpose served in extending the monitoring requirements to embrace a full application of Section 9(a) eligibility restrictions because of mixed funding, extended mixed funding or shared funding. The Participating Insurance Companies and Plans are not expected to play any role in the management of the Insurance Funds. Those individuals who participate in the management of the Insurance Funds will remain the same regardless of which VA Accounts, VLI Accounts, Plans or other Eligible 817(h) Purchasers invest in the Insurance Funds. Applying the monitoring requirements of Section 9(a) of the Act because of investment by VLI Accounts would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by owners of VLI Contracts and Plan participants.

14. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act provide exemptions from pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed funding, extended mixed funding and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its variable life insurance contract owners with respect to the investments of an underlying investment company, or any contract between such an investment company and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)).

15. Rules 6e–2(b)(l5)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that an insurance company may disregard the voting instructions of owners of its variable life insurance contracts if such owners initiate any change in an underlying investment company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B) and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T)).

16. In the case of a change in the investment policies of the underlying investment company, the insurance company, in order to disregard contract owner voting instructions, must make a good faith determination that such a change either would: (1) Violate state law, or (2) result in investments that either (a) would not be consistent with the investment objectives of its separate account, or (b) would vary from the general quality and nature of investments and investment techniques

used by other separate accounts of the company, or of an affiliated life insurance company with similar investment objectives.

17. Both Rule 6e–2 and Rule 6e–3(T) generally recognize that a variable life insurance contract is primarily a life insurance contract containing many important elements unique to life insurance contracts and subject to extensive state insurance regulation. In adopting subparagraph (b)(15)(iii) of these Rules, the Commission implicitly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters.

18. The sale of Insurance Fund shares to Plans will not have any impact on the provisions of Rules 6e–2 and 6e–3(T) relating to pass-through voting and an insurance company's ability to disregard voting instructions in certain circumstances. Shares sold to Plans will be held by such Plans, not insurance companies. The exercise of voting rights by Plans, whether by trustees, other fiduciaries, participants, beneficiaries, or investment managers engaged by the Plans, does not raise the type of issues respecting disregard of voting rights that are raised by VLI Accounts. With respect to Plans, which are not registered as investment companies under the Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. For example, for many Plans, under Section 403(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), shares of a portfolio of an investment company sold to a Plan must be held by the trust(s) funding the Plan. Section 403(a) also provides that the trustee(s) of such trusts must have exclusive authority and discretion to manage and control the Plan, with two exceptions: (1) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (2) when the authority to manage, acquire, or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. For such Plans, unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting investment company shares (or related proxies) held by their Plan.

19. If a named fiduciary to a Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held, unless the right to vote such shares is reserved to the trustee(s) or another named fiduciary. The Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Plans in their discretion. Some Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from Plan participants.

20. Where a Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among the Variable Contract owners and Plan participants with respect to voting of the respective Fund shares. Accordingly, unlike the circumstances surrounding VLI Accounts and VA Accounts, because Plans are not required to pass through voting rights to participants, the issue of resolution of material irreconcilable conflicts of interest should not arise with respect to voting Insurance Fund shares.

21. In addition, if a Plan were to hold a controlling interest in an Insurance Fund, Applicants do not believe that such control would disadvantage other investors in such Insurance Fund to any greater extent than is the case when any institutional shareholder holds a majority of the shares of any open-end management investment company. In this regard, Applicants submit that investment in an Insurance Fund by a Plan will not create any of the voting complications occasioned by VLI Account investments in the Insurance Fund. Unlike VLI Account investments, Plan voting rights cannot be frustrated by veto rights of Participating Insurance Companies or state insurance regulators.

22. Where a Plan provides participants with the right to instruct the trustee(s) as to how to vote Insurance Fund shares, Applicants see no reason why such participants generally or those in a particular Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage VLI Contract owners. The purchase of shares by Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

23. Similarly, an investment adviser to an Insurance Fund (or its affiliates) and the general accounts of Participating Insurance Companies are not subject to any pass-through voting requirements. Accordingly, unlike the circumstances surrounding VLI Account and VA Account investments in Insurance Fund shares, investment in such shares by Eligible 817(h) Purchasers should not raise issues of resolution of material irreconcilable conflicts of interest with respect to voting.

24. Applicants recognize that the Commission's primary concern with respect to mixed funding, extended mixed funding and shared funding issues is the potential for irreconcilable conflicts between the interests of owners of variable life insurance contracts and those of other investors in an open end investment company serving as an investment vehicle for such contracts. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 was first adopted, variable annuity separate accounts could invest in mutual funds whose shares were also offered to the general public. Therefore, the Commission staff may have been concerned with the potentially different investment motivations of public shareholders and owners of variable life insurance contracts. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and the investment decisions of public shareholders.

25. For reasons unrelated to the Act, however, Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuity contracts funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for both variable annuity contracts and variable life insurance contracts. In particular, Section 817(h) of the Code, in effect, requires that the investments made by both variable annuity and variable life insurance separate accounts be "adequately diversified." If such a separate account is organized as part of a "two-tiered" arrangement where the account invests in shares of an underlying open-end investment company (i.e., an underlying fund), the diversification test will be applied to the underlying fund (or to each of several underlying funds), rather than to the separate account itself, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts."

Accordingly, a separate account that invests in a publicly available mutual fund will not be adequately diversified for these purposes. As a result, any underlying fund, including any Fund that sells shares to VA Accounts or VLI Accounts, would, in effect, be precluded from also selling its shares to the public. Consequently, the Insurance Funds may not sell their shares to the public.

26. The rights of an insurance company or a state insurance regulator to disregard the voting instructions of owners of Variable Contracts is not inconsistent with either mixed funding or shared funding. The National Association of Insurance Commissioners Variable Life Insurance Model Regulation (the "NAIC Model Regulation") suggests that it is unlikely that insurance regulators would find an underlying fund's investment policy, investment adviser or principal underwriter objectionable for one type of Variable Contract but not another type. The NAIC Model Regulation has long permitted the use of a single underlying fund for different separate accounts. Moreover, the NAIC Model Regulation does not distinguish between scheduled premium and flexible premium variable life insurance contracts. The NAIC Model Regulation, therefore, reflects the NAIC's apparent confidence that such combined funding is appropriate and that state insurance regulators can adequately protect the interests of owners of all variable contracts.

27. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulator could require action that is inconsistent with the requirements of other states in which the insurance company offers its contracts. However, the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

28. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected Participating Insurance Company will be required to withdraw its separate account investments in the relevant Insurance Fund. This requirement will be provided for in the Participation Agreement that will be entered into by Participating Insurance Companies with the relevant Insurance Fund.

29. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the Participating Insurance Company the right to disregard the voting instructions of VLI Contract owners in certain circumstances. This right derives from the authority of state insurance regulators over VLI Accounts and VA Accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), a Participating Insurance Company may disregard VLI Contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by such Contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

30. A particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the voting instructions of a majority of VLI Contract owners. The Participating Insurance Company's action possibly could be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the voting instructions of VLI Contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the relevant Insurance Fund's election, to withdraw its VLI Accounts' and VA Accounts' investments in the relevant Insurance Fund. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the Participation Agreement entered into by the Participating Insurance Companies with the relevant Insurance Fund.

31. There is no reason why the investment policies of an Insurance Fund would or should be materially different from what these policies would or should be if the Insurance Fund supported only VA Accounts or VLI Accounts, whether flexible premium or scheduled premium VLI Contrasts. Each type of insurance contract is designed as a long-term investment program.

32. Each Insurance Fund will be managed to attempt to achieve its specified investment objective, and not favor or disfavor any particular Participating Insurance Company or type of insurance contract. There is no reason to believe that different features of various types of Variable Contracts will lead to different investment policies for each or for different VLI Accounts and VA Accounts. The sale of Variable Contracts and ultimate success of all VA Accounts and VLI Accounts depends, at least in part, on satisfactory investment performance, which provides an incentive for each Participating Insurance Company to seek optimal investment performance.

33. Furthermore, no single investment strategy can be identified as appropriate to a particular Variable Contract. Each "pool" of VLI Contract and VA Contract owners is composed of individuals of diverse financial status, age, insurance needs and investment goals. An Insurance Fund supporting even one type of Variable Contract must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic support for the continuation of the Insurance Funds. Mixed and shared funding will broaden the base of potential Variable Contract owner investors, which may facilitate the establishment of additional Insurance Funds serving diverse goals.

34. Applicants do not believe that the sale of the shares to Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those that would otherwise exist between owners of VLI Contracts and VA Contracts. Applicants submit that either there are no conflicts of interest or that there exists the ability by the affected parties to resolve such conflicts consistent with the best interests of VLI Contract owners, VA Contract owners and Plan participants.

35. Applicants considered whether there are any issues raised under the Code, Treasury Regulations, or Revenue Rulings thereunder, if Plans, VA Accounts, and VLI Accounts all invest

in the same Insurance Fund. Section 817(h) of the Code is the culmination of a series of Revenue Rulings aimed at the control of investments by owners of Variable Contracts. Section 817(h) is the only Section of the Code that discusses insurance company separate accounts. Treasury Regulation 1.817–5(f)(3)(iii), which establishes the diversification requirements for underlying funds, specifically permits, among other things, "qualified pension or retirement plans," and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations nor Revenue Rulings thereunder, present any inherent conflicts of interest if Plans, VLI Accounts, and VA Accounts all invest in the same Insurance Fund.

36. Applicants note that, while there are differences in the manner in which distributions from VLI Accounts and Plans are taxed, these differences have no impact on the Insurance Funds. When distributions are to be made, and a VLI Account or Plan is unable to net purchase payments to make distributions, the VLI Account or Plan will redeem shares of the relevant Insurance Fund at its net asset values in conformity with Rule 22c–1 under the Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company will then make distributions in accordance with the terms of its VLI Contract and a Plan will then make distributions in accordance with the terms of the Plan.

37. Applicants considered whether it is possible to provide an equitable means of giving voting rights to VLI Contract owners and Plans. In connection with any meeting of Insurance Fund shareholders, the Insurance Fund's transfer agent will inform each Participating Insurance Company and other Eligible 817(h) Purchaser of their share holdings and provide other information necessary for such shareholders to participate in the meeting (e.g., proxy materials). Each Participating Insurance Company then will solicit voting instructions from owners of VLI Contracts and VA Contracts as required by either Rules 6e–2 or 6e–3(T), or Section 12(d)(1)(E)(iii)(aa) of the Act, as applicable, and its Participation Agreement with the relevant Insurance Fund. Shares held by a Participating Insurance Company general account will be voted by the Participating Insurance Company in the same proportion of shares for which it receives voting instructions from its Variable Contract owners. Shares held by Plans will be voted in accordance with applicable law. The voting rights provided to Plans with respect to the shares would be no different from the voting rights that are provided to Plans with respect to shares of mutual funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Insurance Fund, to withdraw its investment in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal.

38. Applicants do not believe that the ability of an Insurance Fund to sell its shares to its investment adviser (or an affiliated person of the adviser), to Plans, or to the general account of a Participating Insurance Company gives rise to a senior security. "Senior Security" is defined in Section 18(g) of the Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." As noted above, regardless of the rights and benefits of participants under Plans and owners of VLI Contracts, VLI Accounts, VA Accounts, Participating Insurance Companies, Plans, and investment advisers (or their affiliates), only have, or will only have, rights with respect to their respective shares of an Insurance Fund. These parties can only redeem such shares at net asset value. No shareholder of an Insurance Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

39. Applicants do not believe that the veto power of state insurance commissioners over certain potential changes to Fund investment objectives approved by owners of VLI Contracts creates conflicts between the interests of such owners and the interests of Plan participants. Applicants note that a basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Their interests and opinions may differ, but this does not mean that inherent conflicts of interest exist between or among such shareholders or that occasional conflicts of interest that do occur between or among them are likely to be irreconcilable.

40. Although Participating Insurance Companies may have to overcome regulatory impediments in redeeming shares of an Insurance Fund held by their VLI Accounts, the Plans and the participants in participant-directed Plans can make decisions quickly and redeem their shares in an Insurance Fund and reinvest in another investment company or other funding vehicle without impediments, or as is the case with most Plans, hold cash pending suitable investment. As a result, conflicts between the interests of VLI Contract owners and the interests of Plans and Plan participants can usually be resolved quickly since the Plans can, on their own, redeem their Insurance Fund shares.

41. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Insurance Companies and Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of VLI Contract owners (or, for that matter, VA Contract owners) and Plan participants from future changes in the federal tax laws than that which already exists between VLI Contract owners and VA Contract owners.

42. Applicants recognize that the foregoing is not an all-inclusive list, but rather is representative of issues that they believe are relevant to this Application. Applicants believe that the discussion contained herein demonstrates that the sale of Insurance Fund shares to Plans trustees would not increase the risk of material irreconcilable conflicts between the interests of Plan participants and VLI Contract owners or other investors. Further, Applicants submit that the use of the Insurance Funds with respect to Plans is not substantially dissimilar from each Insurance Fund's anticipated use, in that Plans, like VLI Accounts, are generally long-term investors.

43. Applicants assert that permitting an Insurance Fund to sell its shares to its investment adviser (or the adviser's affiliates) or to the general account of a Participating Insurance Company will enhance management of each Insurance Fund without raising significant concerns regarding material irreconcilable conflicts among different types of investors.

44. A potential source of initial capital is an Insurance Fund's investment adviser or a Participating Insurance Company. Either of these parties may have an interest in making a capital investment and in assisting an Insurance Fund in its organization. However, provision of seed capital or the purchase of shares in connection with the management of an Insurance Fund by its investment adviser or by a Participating Insurance Company may

be deemed to violate the exclusivity requirement of Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15).

45. Given the conditions of Treasury Regulation 1.817–5(f)(3) and the harmony of interest between an Insurance Fund, on the one hand, and its investment adviser (or affiliates) or a Participating Insurance Company, on the other, Applicants assert that little incentive for overreaching exists. Furthermore, such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, permitting investments by an investment adviser (or its affiliates), or by general accounts of Participating Insurance Companies, will permit the orderly and efficient creation and operation of an Insurance Fund, and reduce the expense and uncertainty of using outside parties at the early stages of the Insurance Fund's operations.

46. Various factors have limited the number of insurance companies that offer Variable Contracts. These factors include the costs of organizing and operating a funding vehicle, certain insurers' lack of experience with respect to investment management, and the lack of name recognition by the public of certain insurance companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Use of an Insurance Fund as a common investment vehicle for VLI Accounts would reduce or eliminate these concerns. Mixed and shared funding should also provide several benefits to owners of VLI Contracts by eliminating a significant portion of the costs of establishing and administering separate underlying funds.

47. Participating Insurance Companies will benefit not only from the investment and administrative expertise of FCM and its affiliates, but also from the potential cost efficiencies and investment flexibility afforded by larger pools of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by an Insurance Fund, thereby promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new Insurance Funds more feasible. Therefore, making the Insurance Funds available for mixed and shared funding will encourage more insurance companies to offer VLI Accounts. This should result in increased competition with respect to both VLI Account design and pricing, which can in turn be expected to result in more product variety. Applicants also assert that sale of shares in an Insurance Fund to Plans, in addition to VLI Accounts and VA Accounts, will result in an increased amount of assets available for investment in an Insurance Fund. This may benefit VLI Account owners by promoting economies of scale, permitting increased safety of investments through greater diversification, and making the addition of new Funds more feasible.

48. Applicants also submit that, regardless of the type of shareholder in an Insurance Fund, its investment adviser (and the adviser's affiliates) are or would be contractually and otherwise obligated to manage the Insurance Fund solely and exclusively in accordance with that Insurance Fund's investment objectives, policies and restrictions, as well as any guidelines established by its board of directors or trustees (a "Board"). Thus, each Insurance Fund will be managed in the same manner as any other mutual fund.

49. Applicants see no significant legal impediment to permitting mixed funding, extended mixed funding and shared funding. VLI Accounts historically have been employed to accumulate shares of mutual funds that are not affiliated with the depositor or sponsor of the VLI Account. In particular, Applicants assert that sales of Insurance Fund shares to Eligible 817(h) Purchasers, as described above, will not have any adverse federal income tax consequences to other investors in such an Insurance Fund.

50. In addition, Applicants note that the Commission has issued numerous orders permitting mixed funding, extended mixed funding and shared funding. Therefore, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a), or 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

Applicants agree that the Commission order requested herein shall be subject to the following conditions which shall apply to the Insurance Fund and any future trusts:

1. A majority of the Board of the Fairholme Corporation will consist of persons who are not "interested persons" of the Insurance Fund, as defined by Section 2(a)(19) of the Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification or bona fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board, (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies, or (c) for such longer period as the Commission may prescribe by order upon application, or by future rule.

2. The Board of each Insurance Fund will monitor the Insurance Fund for the existence of any material irreconcilable conflict between and among the interests of the owners of all VLI Contracts and VA Contracts and participants of all Plans investing in the Insurance Fund, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority, (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities, (c) an administrative or judicial decision in any relevant proceeding, (d) the manner in which the investments of the Insurance Fund are being managed, (e) a difference in voting instructions given by VA Contract owners, VLI Contract owners, and Plans or Plan participants, (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in an Insurance Fund), an adviser and its affiliates, and any Plan that executes a Participation Agreement upon its becoming an owner of 10% or more of the net assets of an Insurance Fund (collectively, "Participants") will report any potential or existing conflicts to the Board of the Insurance Fund. Net assets of an Insurance Fund will be defined and calculated in accordance with the prospectus and as reflected in the financial statements of the Insurance Fund. Each Participant will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner

voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with an Insurance Fund, and these responsibilities will be carried out with a view only to the interests of the Variable Contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Plans under their Participation Agreement with an Insurance Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of the Board of an Insurance Fund, or a majority of the disinterested directors/trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors/trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of their VLI Accounts or VA Accounts from the Insurance Fund and reinvesting such assets in a different investment vehicle including another Insurance Fund, (b) in the case of a Participating Insurance Company, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* VA Contract owners or VLI Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change, (c) withdrawing the assets allocable to some or all of the Plans from the affected Insurance Fund and reinvesting them in a different investment medium, and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the Insurance Fund, to withdraw such Participating Insurance Company's VA Account and VLI Account investments in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Insurance Fund, to withdraw its investment in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their Participation Agreement with an Insurance Fund, and these responsibilities will be carried out with a view only to the interests of Variable Contract owners or, as applicable, Plan participants. For purposes of this Condition 4, a majority of the disinterested directors/trustees of the Board of each Insurance Fund will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Insurance Fund or its investment adviser be required to establish a new funding vehicle for any Variable Contract or Plan. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Plan will be required by this Condition 4 to establish a new funding vehicle for the Plan if: (a) A majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Plan, the Plan trustee makes such decision without a Plan participant vote.

5. The Board of each Insurance Fund's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners whose Contracts are issued through registered VLI Accounts or registered VA Accounts for as long as required by the Act as interpreted by the Commission. However, as to Variable Contracts issued through VA Accounts or VLI Accounts not registered as investment companies under the Act, pass-through voting privileges will be extended to owners of such Contracts to the extent granted by the Participating Insurance Company. Accordingly, such Participating Insurance Companies, where applicable, will vote the shares of each Insurance Fund held in their VLI Accounts and VA Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each of their VLI and VA Accounts investing in an Insurance Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges as provided in this Application shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with the Insurance Fund. Each Participating Insurance Company will vote shares of each Insurance Fund held in its VLI or VA Accounts for which no timely voting instructions are received, as well as shares held by its general account or otherwise attributed to it, in the same proportion as those shares for which voting instructions are received. Each Plan will vote as required by applicable law, governing Plan documents and as provided in this application.

7. As long as the Act requires pass-through voting privileges to be provided to Variable Contract owners or the Commission interprets the Act to require the same, an Insurance Fund investment adviser (or its affiliates) or any general account will vote their shares of the Insurance Fund in the same proportion as all votes cast on behalf of all Variable Contract owners having voting rights; provided, however, that such an investment adviser (or affiliates) shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Insurance Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in its shares), and, in particular, the Insurance Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although each Insurance Fund is not, or will not be, one of those trusts of the type described in Section 16(c) of the

Act), as well as with Section 16(a) of the Act and, if and when applicable, Section 16(b) of the Act. Further, each Insurance Fund will act in accordance with the Commission's interpretations of the requirements of Section 16(a) with respect to periodic elections of directors/trustees and with whatever rules the Commission may promulgate thereto.

9. An Insurance Fund will make its shares available to the VLI Accounts, VA Accounts, and Plans at or about the time it accepts any capital from its investment adviser (or affiliates) or from a general account of a Participating Insurance Company.

10. Each Insurance Fund has notified, or will notify, all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in VLI Account and VA Account prospectuses or Plan documents. Each Insurance Fund will disclose, in its prospectus that: (a) Shares of the Insurance Fund may be offered to both VA Accounts and VLI Accounts and, if applicable, to Plans, (b) due to differences in tax treatment and other considerations, the interests of various Variable Contract owners participating in the Insurance Fund and the interests of Plan participants investing in the Insurance Fund, if applicable, may conflict, and (c) the Insurance Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflicts.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the Act are amended, or Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Insurance Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, to the extent such rules are applicable.

12. Each Participant, at least annually, shall submit to the Board of each Insurance Fund such reports, materials or data as the Board reasonably may request so that the directors/trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board of an Insurance Fund. The obligations of the Participants to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all Participants under their Participation Agreement with the Insurance Fund.

13. All reports of potential or existing conflicts received by the Board of each Insurance Fund, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

14. Each Insurance Fund will not accept a purchase order from a Plan if such purchase would make the Plan an owner of 10 percent or more of the net assets of the Insurance Fund unless the Plan executes an agreement with the Insurance Fund governing participation in the Insurance Fund that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares.

15. Each Insurance Fund will make its shares available through an Account at or about the same time that the Insurance Fund receives any seed money from the general account of a Participating Insurance Company.

Conclusion

For the reasons summarized above, applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7695 Filed 3–31–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64137; File No. SR–Phlx–2011–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Complex Order Fees

March 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Complex Order[3] Fees in Section I of its Fee Schedule titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

The text of the proposed rule change is available on the Exchange's Website at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section I, Part B of the Exchange's Fee Schedule, titled "Complex Order" to pay a Customer Complex Order Rebate for Adding Liquidity of $0.25 per contract in certain symbols, specifically options overlying: (i) Standard and Poor's Depositary Receipts/SPDRs ("SPY");[4] (ii) the PowerShares QQQ Trust ("QQQQ")®; and Apple, Inc. (AAPL), in order to attract additional Customer order flow in those symbols.

Currently, the Exchange pays a $0.24 per contract Customer Complex Order Rebate for Adding Liquidity in all Select Symbols.[5] The Exchange is proposing to pay a $0.25 per contract Rebate for Adding Liquidity for Customer Complex Orders in only the following symbols: SPY, QQQQ and AAPL. Other market participants would not be entitled to the Rebate for Adding Liquidity.[6] The Exchange would continue to pay Customers a rebate of $0.24 per contract for transacting a Customer Complex Order in all other Select Symbols, except SPY, QQQ and AAPL which would receive the $0.25 per contract rebate.

The Exchange does not propose to amend the fees in Section I, Part A titled "Single contra-side order."

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange believes that it is reasonable to only pay a Rebate for Adding Liquidity to Customers because this Customer rebate would attract Customer order flow to the Exchange for the benefit of all market participants. The Exchange believes that the proposal is equitable because by paying a Rebate for Adding Liquidity to Customers, all market participants would benefit from the increased liquidity which increased Customer order flow would bring to the Exchange.

Further, the Exchange believes that it is reasonable to pay a different rebate for transacting equity options in certain symbols. NYSE Arca, Inc. ("NYSE Arca") pays an additional $.05 per contract credit above the stated post liquidity credit for electronic transactions in options overlying SPY, C, BAC, QQQQ, AAPL, IWM, XLF, GLD, EEM, GE, UNG, FAZ, DIA, GDX, and USO which are referred to as the "premium tier."[9] The Exchange is proposing to pay different rebates for different symbols similar to the manner in which NYSE Arca pays an additional contract credit in certain symbols.

The Exchange believes that its proposal to pay a higher rebate for transactions in equity options in SPY, QQQQ and AAPL, as compared to the other Select Symbols, is equitable because the Exchange would uniformly pay the same rebates for all Customer Complex Orders in these three symbols.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the Complex Order fees and rebates it assesses must be competitive with fees and rebates assessed in place on other exchanges. The Exchange believes that this competitive marketplace impacts the fees and rebates present on the Exchange today and influences the proposals set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx-2011–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–37. 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

[4] SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

[5] A list of all symbols subject to the Rebates and Fees for Adding and Removing Liquidity are listed in Section I of the Exchange's Fee Schedule and titled "Select Symbols."

[6] The only market participant that receives a Rebate for Adding Liquidity for Complex Orders today is a Customer.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* NYSE Arca's Fee Schedule.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–37 and should be submitted on or before April 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7730 Filed 3–31–11; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64133; File No. SR–NYSEAmex–2011–19]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 440B To Modify the Exchange's Procedures for Handling Short Sale Orders During a Period When the Short Sale Price Test Restrictions of Rule 201 of Regulation SHO Are in Effect

March 28, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 25, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 440B (Short Sales) to modify the Exchange's procedures for handling short sale orders during a period when the short sale price test restrictions of Rule 201 of Regulation SHO ("Rule 201")[4] are in effect ("Short Sale Period"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201 of Regulation SHO under the Act.[5] In order to implement the provisions of revised Rule 201, the Exchange amended NYSE Amex Equities Rule 440B (Short Sales) to (1) Establish procedures for the Exchange, as a listing market, to determine that the short sale price test restrictions of Rule 201 have been triggered for a covered security, (2) establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the short sale price test restrictions of Rule 201 are triggered, including establishing what types of short sale orders will be re-priced to achieve a "Permitted Price" (as defined and calculated in Rule 440B(e)), in accordance with Rule 201, during a Short Sale Period, (3) establish the Exchange's procedures regarding the execution and display of permissible orders during a Short Sale Period, and the execution and display of orders marked "short exempt" during such a period, (4) establish the Exchange's procedures regarding the permissible execution price of short sale orders in single-priced opening, re-opening and closing transactions during a Short Sale Period, and (5) provide that, during a Short Sale Period, Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid (except as otherwise provided in Rule 440B and consistent with Rule 201).[6]

Under Rule 440B(e), during a Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by Exchange systems one minimum price increment above the current national best bid to permit their execution at a price that is compliant with the short sale price test restrictions of Rule 201. Consistent with Rule 201,[7] the Permitted Price for securities for which the national best bid is $1 or more is $.01 above the national best bid; the Permitted Price for securities for which the national best bid is below $1 is $.0001 above the national best bid.[8]

Among other things, Rule 440B(f) implements Rule 201(b)(1)(iii)(A), which provides that a trading center must have policies and procedures reasonably designed to permit the execution of a displayed short sale order of a covered security if, at the time of the initial display of the short sale order, the order was at a price above the current national best bid. Rule 440B(f) specifically provides that the Exchange will execute and display a short sale order without regard to price if, at the time of the initial display of the short sale order, the order was at a price above the then current national best bid.

The Exchange proposes to amend Rule 440B(e) to provide for how Exchange systems will treat short sale orders that are not marked "short exempt" during a Short Sale Period, i.e., displayed short sale orders pursuant to Rule 440B(f) or non-marketable displayable or non-displayed short sale orders that Exchange systems have not yet re-priced pursuant to Rule 440B(e), and that would be required to be routed to a protected bid pursuant to Regulation NMS, which, by definition, would be the national best bid or lower. An example of a situation where Exchange systems would otherwise be required to route to the national best bid includes the following: (1) A short sale order is displayed pursuant to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.201.

[5] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7–08–09; Amendments to Regulation SHO) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

[6] *See* Securities Exchange Act Release No. 63974 (February 25, 2011), 76 FR 12198 (March 4, 2011) (SR–NYSEAmex–2011-08).

[7] *See* Rule 201 Adopting Release at 11247.

[8] 17 CFR 242.612.

440B(f), (2) the Exchange enters a "slow" state, for example, if the Exchange reaches a liquidity replenishment point pursuant to Exchange Rule 1000, and (3) when the Exchange resumes "fast" trading, the previously displayed short sale order crosses the national best bid.[9] In such scenario, pursuant to Regulation NMS, the Exchange would be required to route such previously displayed short sale order to be executed against the national best bid.

The Exchange proposes to address how Exchange systems will treat short sale orders that have been displayed pursuant to Rule 440B(f) or that are not yet marketable and therefore have not yet been re-priced, and that would otherwise be required to be routed to an away market. For such scenarios, the Exchange proposes that rather than route such short sale orders to the national best bid, the Exchange will instead re-price such short sale orders to a Permitted Price, as provided for in Rule 440B(e). In particular, the proposed amendment to Rule 440B would add new subparagraph (e)(2), which would provide that, during a Short Sale Period, Exchange systems will not route to an away market short sale orders that have been displayed pursuant to Rule 440B(f) or that have not yet been re-priced consistent with Rule 440B(e) and instead will re-price such orders to a Permitted Price. In addition, the proposed amendment would renumber existing subparagraph (e)(2) as (e)(3). The Exchange further proposes to amend Rule 440B(e)(3) to provide that Exchange systems will not route the DMM interest identified in that subparagraph and will instead cancel such interest. Accordingly, if Exchange systems would otherwise route such DMM interest to an away market in compliance with Regulation NMS, during a Short Sale Period, Exchange systems will instead cancel such DMM short sale interest rather than route it.

The Exchange also proposes a clarifying amendment to Rule 440B(g) to specify that if a short sale order has been marked "short exempt," Exchange systems will display, execute, and route such order without regard to whether the order is at a Permitted Price.

[9] The Exchange enters a "slow" trading state, or "Non-Firm Mode" when, pursuant to Rule 602(a)(3)(i) of Regulation NMS and Exchange Rule 60(c)(ii)(A) and (B), the Exchange quotation is not available for automatic execution. The Exchange resumes a "fast" trading state, or "Normal Mode" when the Exchange is open for trading and collects, processes, and makes available to quotation vendors the highest bid and the lowest offer, and the quotation size, in compliance with Rule 602(a) of Regulation NMS and Exchange Rule 60(c)(i).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to implement the provisions of Rule 201 of Regulation SHO by refining the Exchange's written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the short sale price test restrictions established in that rule. To that end, the proposed rule change will establish the Exchange's procedures regarding handling of short sale orders during a Short Sale Period that might otherwise be routed to away markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.[16] Waiving the 30-day operative delay will allow the Exchange to handle short sale orders during a Short Sale Period that might otherwise be routed to an away market in a manner that is consistent with Rule 201. Therefore, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–19. This file number should be included on the subject line if e-mail is used. To help the

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–19 and should be submitted on or before April 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

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BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64136; File No. SR–NYSE–2011–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 440B to Modify the Exchange's Procedures for Handling Short Sale Orders During a Period When the Short Sale Price Test Restrictions of Rule 201 of Regulation SHO are In Effect

March 28, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 25, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 440B (Short Sales) to modify the Exchange's procedures for handling short sale orders during a period when the short sale price test restrictions of Rule 201 of Regulation SHO ("Rule 201")[4] are in effect ("Short Sale Period"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201 of Regulation SHO under the Act.[5] In order to implement the provisions of revised Rule 201, the Exchange amended NYSE Rule 440B (Short Sales) to (1) Establish procedures for the Exchange, as a listing market, to determine that the short sale price test restrictions of Rule 201 have been triggered for a covered security, (2) establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the short sale price test restrictions of Rule 201 are triggered, including establishing what types of short sale orders will be re-priced to achieve a "Permitted Price" (as defined and calculated in Rule 440B(e)), in accordance with Rule 201, during a Short Sale Period, (3) establish the Exchange's procedures regarding the execution and display of permissible orders during a Short Sale Period, and the execution and display of orders marked "short exempt" during such a period, (4) establish the Exchange's procedures regarding the permissible execution price of short sale orders in single-priced opening, re-opening and closing transactions during a Short Sale Period, and (5) provide that, during a Short Sale Period, Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid (except as otherwise provided by Rule 440B and consistent with Rule 201).[6]

Under Rule 440B(e), during a Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by Exchange systems one minimum price increment above the current national best bid to permit their execution at a price that is compliant with the short sale price test restrictions of Rule 201. Consistent with Rule 201,[7] the Permitted Price for securities for which the national best bid is $1 or more is $.01 above the national best bid; the Permitted Price for securities for which the national best bid is below $1 is $.0001 above the national best bid.[8]

Among other things, Rule 440B(f) implements Rule 201(b)(1)(iii)(A), which provides that a trading center must have policies and procedures reasonably designed to permit the execution of a displayed short sale order of a covered security if, at the time of the initial display of the short sale order, the order was at a price above the current national best bid. Rule 440B(f) specifically provides that the Exchange will execute and display a short sale order without regard to price if, at the time of the initial display of the short sale order, the order was at a price above the then current national best bid.

The Exchange proposes to amend Rule 440B(e) to provide for how

[4] 17 CFR 242.201.

[5] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7–08–09; Amendments to Regulation SHO) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

[6] *See* Securities Exchange Act Release No. 63977 (February 25, 2010), 76 FR 12165 (March 4, 2011) (SR–NYSE–2011–05).

[7] *See* Rule 201 Adopting Release at 11247.

[8] 17 CFR 242.612.

Exchange systems will treat short sale orders that are not marked "short exempt" during a Short Sale Period, i.e., displayed short sale orders pursuant to Rule 440B(f) or non-marketable displayable or non-displayed short sale orders that Exchange systems have not yet re-priced pursuant to Rule 440B(e), and that would be required to be routed to a protected bid pursuant to Regulation NMS, which, by definition, would be the national best bid or lower. An example of a situation where Exchange systems would otherwise be required to route to the national best bid includes the following: (1) A short sale order is displayed pursuant to Rule 440B(f), (2) the Exchange enters a "slow" state, for example, if the Exchange reaches a liquidity replenishment point pursuant to Exchange Rule 1000, and (3) when the Exchange resumes "fast" trading, the previously displayed short sale order crosses the national best bid.[9] In such scenario, pursuant to Regulation NMS, the Exchange would be required to route such previously displayed short sale order to be executed against the national best bid.

The Exchange proposes to address how Exchange systems will treat short sale orders that have been displayed pursuant to Rule 440B(f) or that are not yet marketable and therefore have not yet been re-priced, and that would otherwise be required to be routed to an away market. For such scenarios, the Exchange proposes that rather than route such short sale orders to the national best bid, the Exchange will instead re-price such short sale orders to a Permitted Price, as provided for in Rule 440B(e). In particular, the proposed amendment to Rule 440B would add new subparagraph (e)(2), which would provide that, during a Short Sale Period, Exchange systems will not route to an away market short sale orders that have been displayed pursuant to Rule 440B(f) or that have not yet been re-priced consistent with Rule 440B(e) and instead will re-price such orders to a Permitted Price. In addition, the proposed amendment would renumber existing subparagraph (e)(2) as (e)(3). The Exchange further proposes to amend Rule 440B(e)(3) to provide that Exchange systems will not route the DMM interest identified in that subparagraph and will instead cancel such interest. Accordingly, if Exchange systems would otherwise route such DMM interest to an away market in compliance with Regulation NMS, during a Short Sale Period, Exchange systems will instead cancel such DMM short sale interest rather than route it.

The Exchange also proposes a clarifying amendment to Rule 440B(g) to specify that if a short sale order has been marked "short exempt," Exchange systems will display, execute, and route such order without regard to whether the order is at a Permitted Price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to implement the provisions of Rule 201 of Regulation SHO by refining the Exchange's written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the short sale price test restrictions established in that rule. To that end, the proposed rule change will establish the Exchange's procedures regarding handling of short sale orders during a Short Sale Period that might otherwise be routed to away markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.[16] Waiving the 30-day operative delay will allow the Exchange to handle short sale orders during a Short Sale Period that might otherwise be routed to an away market in a manner that is consistent with Rule 201. Therefore, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[9] The Exchange enters a "slow" trading state, or "Non-Firm Mode" when, pursuant to Rule 602(a)(3)(i) of Regulation NMS and Exchange Rule 60(c)(ii)(A) and (B), the Exchange quotation is not available for automatic execution. The Exchange resumes a "fast" trading state, or "Normal Mode" when the Exchange is open for trading and collects, processes, and makes available to quotation vendors the highest bid and the lowest offer, and the quotation size, in compliance with Rule 602(a) of Regulation NMS and Exchange Rule 60(c)(i).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–11 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–2011–11. 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 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* 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–2011–11 and should be submitted on or before April 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64132; File No. SR–BATS–2011–009]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Proposed Rule Change, as Modified by Amendment No. 1, To Create a Directed Order Program on a 6-Month Pilot Basis

March 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 2011, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 24, 2011, the Exchange filed Amendment No. 1 to the proposed rule filing.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal for the BATS Exchange Options Market ("BATS Options") to create, on a pilot basis, new BATS Rule 21.1(d)(13), entitled "Market Maker Price Improving Orders" and new BATS Rule 21.1(d)(14), entitled "Directed Orders." The Exchange also proposes to amend existing BATS Rule 21.1(d)(2), entitled "Price Improving Orders."

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing certain modifications and additions to its rules related to the trading of options. First, the Exchange is proposing the establishment of new Rule 21.1(d)(13), entitled Market Maker Price Improving Orders. Second the Exchange is proposing the establishment of new Rule 21.1(d)(14), entitled Directed Orders. Third, the Exchange is proposing to modify the text of Rule 21.1(d)(6), entitled Price Improving Orders, to make a clarifying change.[4]

The Exchange is proposing the rule changes described below to establish a directed order program through which members of BATS Options ("Options Members") can direct an order to a particular BATS Options Market Maker for potential execution at a price improved over the existing National Best Bid ("NBB") or National Best Offer ("NBO"). As part of this program, BATS is proposing to define two new order types. The first would be new Rule 21.1(d)(13), entitled Market Maker Price Improving Orders, which are orders from a BATS Options Market Maker to buy or sell an option that has a displayed price and size and a non-displayed price at which the BATS Options Market Maker is willing to trade with a Directed Order. As proposed, a Market Maker Price Improving Order would be ranked on the BATS Options Book at its displayed price. The non-displayed price of the Market Maker Price Improving Order would not be entered into the BATS Options Book, but would be, along with its displayed size, converted to a buy or sell order at its non-displayed price in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange listed additional data that the Exchange will include in monthly reports to be provided to the Commission during the pilot program.

[4] The Exchange previously filed a proposal to establish a directed order program for BATS Options. *See* Securities Exchange Act Release No. 63403 (December 1, 2010), 75 FR 76059 (December 7, 2010) (SR–BATS–2010–034) (notice of filing of directed order program proposal). The Exchange withdrew its original filing in its entirety and has re-filed this proposal to address comments received on the proposal by eliminating the originally proposed midpoint order functionality, to provide additional clarity in a few areas, and to propose operation of the directed order program on a pilot basis. In a manner consistent with this filing, the Exchange also responded to comments received on the original proposal. *See* Letter from Eric J. Swanson, Secretary, BATS Exchange, Inc. to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission dated February 24, 2011.

response to a Directed Order directed to the BATS Options Market Maker. For the avoidance of doubt, the Exchange reiterates that, as proposed, the full displayed size of a Market Maker Price Improving Order, and only the full displayed size of a Market Maker Price Improving Order, is available to trade with a Directed Order directed to a BATS Options Market Maker. Key to the structure of the proposal is that it creates incentives for displayed price and size discovery available to all market participants.

The second new order type proposed would be new Rule 21.1(d)(14), entitled Directed Orders, which are orders from a BATS Options Member that are directed for execution to a particular BATS Options Market Maker. For a BATS Options Market Maker to participate in an execution against a Directed Order, (1) the Directed Order must be from a BATS Options Member that is on a list of eligible Options Members provided to the Exchange by the BATS Options Market Maker, in a manner prescribed by the Exchange, (2) the BATS Options Market Maker must be publicly quoting on BATS at the NBB (for sell Directed Orders) or NBO (for buy Directed Orders) with a Market Maker Price Improving Order that contains a non-displayed amount of price improvement over the NBB or NBO at the time the Directed Order arrives to the Exchange, and (3) the Directed Order must be marketable against the non-displayed price of the Market Maker Price Improving Order.

If the above conditions are met, and if there are no other non-displayed orders at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order, the Directed Order will trade with the Market Maker Price Improving Order up to the full displayed size of the Market Maker Price Improving Order. Any remaining contracts from the Directed Order will be handled, consistent with the instructions on the Directed Order, in accordance with the order display and book processing requirements of Rule 21.8 and, if applicable, processed in accordance with the order routing requirements of Rule 21.9.

If there are non-displayed orders on the BATS Options Book at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order, those other non-displayed orders will in all cases have priority over the non-displayed price of the Market Maker Price Improving Order. In such circumstances, the Market Maker Price Improving Order may still execute at its non-displayed price against the Directed Order consistent with the price/time priority provisions of Rule 21.8 to the extent of any remaining contracts of the Directed Order. Any contracts remaining of the Directed Order will continue to be processed in a manner consistent with the order display and book processing provisions of Rule 21.8, and if applicable, the order routing provisions of Rule 21.9.

As proposed, an Options Market Maker Price Improving Order would be required to have a non-displayed price better than the displayed limit price that could be entered in an increment as small as (1) one cent. The non-displayed price of a Market Maker Price Improving Order is not entered into the BATS Options Book, and is only eligible to trade with a Directed Order to the extent that certain conditions precedent are satisfied, including (1) that the displayed price of the Market Maker Price Improving Order is equal to the NBB (for sell directed orders) or the NBO (for buy directed orders) at the time the Directed Order arrives to the Exchange, and (2) that there are no other orders on the BATS Options Book at prices equal to or better than the non-displayed prices of the Market Maker Price Improving Order.[5]

As noted elsewhere in this proposal, in all cases a Market Maker Price Improving Order must include a displayed price that is equal to the NBB or NBO for such order to be eligible to execute at its non-displayed price against a Directed Order. As such, the proposal enhances the public price discovery process—if the market maker is not publicly quoting at the NBB or NBO at the time the Directed Order arrives to BATS Options, the market maker will only trade with that Directed Order to the extent that any other interest on the BATS Options Book at or better than the NBB or NBO and any other interest with price/time priority over the market maker's order is first satisfied. Accordingly, in order to enjoy the benefits of trading against Directed Orders, a market maker is required to publicly display a competitively priced order which is available, and hence at risk, to all Options Members.

The Exchange is also proposing to delete certain language from its existing Price Improving Order rule text. In particular, as currently written, Rule 21.1(d)(6) states that "Price Improving Orders *that are available for display* * * *."[6] The Exchange is proposing to delete the clause "that are available to display," which although intended to simply distinguish an order executed upon arrival to the Exchange from an order posting to the BATS Options Book, has the potential to cause confusion to the extent it may suggest that Price Improving Orders can be posted on the BATS Options Book without a displayed price. That is not the case today, would not be the case under the proposed changes to the rules, and BATS is proposing to delete this clause to eliminate any confusion on this point.

The elements of the Exchange's proposal to create a directed order program are specifically designed to enhance opportunities available in the market for Options Members to obtain price improvement for customer orders in the context of BATS' price/time priority, continuous auction market. By requiring BATS Options Market Makers to be quoting at the NBB or NBO to participate in an execution against a Directed Order directed to it, BATS' proposal incentivizes market makers to competitively quote and thereby furthers the public price discovery process. By further requiring BATS Options Market Makers to include a non-displayed price better than the displayed limit price at an increment as small as (1) one cent, the proposal increases the opportunities for customer orders to receive price improvement over the NBBO. Moreover, by permitting all Options Members to enter orders in the same increments as Market Maker Price Improving Orders, and according those orders in all cases priority at their non-displayed prices over Market Maker Price Improving Orders, the proposal avoids creating participation guarantees in place at other markets and instead promotes market-wide competition for executions at prices between the NBBO.

Further, the proposal provides all market participants, including other market makers that do not have orders directed to them, with the ability to compete with market makers for executions against Directed Orders. BATS notes that all members, including market makers, have the ability to enter Price Improving Orders and any other orders that can compete in the same price increments with a particular market maker's Market Maker Price Improving Order. In options classes not subject to the penny pilot, market makers and non-market makers have the ability under the proposal to post orders with non-displayed prices at penny increments between the NBBO. Importantly, in all cases, market makers cede priority to all other orders priced equal to or better than the non-

[5] As described in proposed Rule 11.9(c)(13)(B), all other interest on the BATS Book at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order has priority over the Market Maker Price Improving Order and, hence, will execute first against the Directed Order.

[6] Emphasis added.

displayed price of their Market Maker Price Improving Orders. In options classes subject to the penny pilot, all market participants can effectively compete against non-displayed Market Maker Price Improving Orders simply by improving the NBBO. In BATS' price/time priority market, the non-displayed portion of a Market Maker Price Improving Order will only execute at the non-displayed price when that price is the best available price. In addition, through its fee structure and "maker/taker" pricing, BATS currently incents and intends to continue to provide certain incentives to BATS Options Members to display aggressively priced liquidity on BATS Options.

BATS also wishes to make clear that its proposal has no impact on its existing rules regarding customer order facilitation. Today, BATS members seeking to facilitate customer order on BATS Options must comply with facilitation rules requiring the member to expose either the customer order or the principal order on the exchange for one second prior to a facilitation execution. These rules are similar to rules in effect on other exchanges, and the Exchange's proposal does not amend these requirements.[7]

Pursuant to the proposed directed order program, a BATS Options Member who notifies a BATS Options Market Maker of its intention to submit a Directed Order to BATS Options so that the BATS Options Market Maker could change its quotation to match the NBB or NBO immediately prior to submission of the Directed Order would be engaging in conduct inconsistent with just and equitable principles of trade in violation of Rule 3.1 and Rule 18.4(f). In addition, a BATS Options Market Maker who becomes aware of a customer order from an affiliated broker-dealer or desk within the same broker-dealer and acts on such information to change its quotations to match the NBB or NBO immediately prior to submission of a Directed Order would be in violation of the Exchange's Rule 22.10, "Limitations on Dealings". BATS will proactively conduct surveillance for such conduct and enforce against such violations.

The Exchange is proposing to adopt Rules 21.1(d)(13) and 21.1(d)(14) as a six month pilot. During this pilot period, the Exchange will study the impact of the rules and will provide the Commission with monthly reports detailing its ongoing review of the pilot. These reports will include: data and analysis regarding price improvement trends following implementation of the directed order program, an assessment of the quotation spreads on BATS Options, data reflecting the size and depth of markets, and descriptions of any patterns that emerge during the pilot period. Specific data included in such reports will include, but not be limited to: (1) The number of Directed Orders submitted to BATS Options; (2) the number of Market Maker Price Improving Orders submitted to BATS Options; (3) information regarding the types of market participants that sent Directed Orders; (4) the number of Market Makers that participated in the directed order program; (5) the percentage of time that Market Makers participating in the directed order program were at the NBBO when a Directed Order arrived at BATS Options; (6) the number of orders, excluding Market Maker Price Improving Orders, against which an incoming Directed Order executed; (7) the proportion of each Directed Order that was executed against a Market Maker Price Improving Order; (8) the percentage of Directed Orders that received price improvement over the NBBO; (9) the average amount of price improvement for Directed Orders; and (10) data related to the quality of the best bid and offer on BATS Options.

2. Statutory Basis

Approval of the rule changes proposed in this submission on a pilot basis is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposed rule meets these requirements in that it promotes competition for customer orders and furthers the public price discovery process by both incentivizing BATS Options Market Makers to publicly display aggressive quotes at the NBBO, as well as incentivizing BATS Options Market Makers and all other BATS Options Members to post non-displayed prices better than the NBBO. BATS notes that the Commission has previously found consistent with the Act non-displayed order types designed to provide price improvement at prices smaller than the minimum price variation in listed options.[10]

Moreover, the Commission has previously approved rules that provide specialist or market maker guarantees up to a certain percentage so long as the specialist or market maker is quoting at the NBBO and such guarantees do not rise to a level that could have a material adverse impact on quote competition with a particular exchange.[11] While BATS' directed order program requires BATS Options Market Makers to be quoting at the NBB or NBO to be eligible to trade with an incoming Directed Order directed to it, in contrast to prior rules approved by the Commission, BATS' proposed directed order program provides no participation guarantees that could negatively impact quote competition. By not providing such guarantees, BATS's proposed directed order program provides incentives to BATS Options Market Makers as well as all other BATS Options Members to aggressively quote, both at the NBBO and at non-displayed prices better than the NBBO.

In addition, the Commission has previously approved rules that permit a specialist or market maker to determine the firms from which it will accept directed or preferenced orders. The Commission has explicitly approved a process similar to that proposed by BATS in the equity markets in which only those members who have been permissioned by a market maker are eligible to submit directed orders to the market maker.[12] And, the Commission

[7] Specifically, BATS Rule 22.12 prohibits Options Members from executing "as principal orders they represent as agent unless (a) agency orders are first exposed on BATS Options for at least one (1) second or (b) the Options Member has been bidding or offering on BATS Options for at least one (1) second prior to receiving an agency order that is executable against such bid or offer (exposure)." Rule 22.12 prevents Options Members from executing agency orders to increase economic gain from trading against the order without first giving other trading interest on BATS Options an opportunity to either trade with the agency order or to trade at the execution price when the Options Member was already bidding or offering on the book.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See, e.g.,* BATS Options Rule 21.1(d)(6) "Price Improving Orders"; Nasdaq Options Market Rule Chapter VI, Section 1(e)(6) "Price Improving Orders".

[11] *See, e.g.,* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR–Phlx–2004–91) (order approving the establishment of a directed order process with certain specialist participation guarantees).

[12] *See* Securities Exchange Act Release No. 52827 (November 23, 2005), 70 FR 72193 (December 1, 2005) (SR–PCX–2005–56) (order approving certain modifications to the PCX Equities, Inc.'s Directed Order Process on the Archipelago Exchange).

has implicitly approved such processes in the options markets by allowing certain price improvement auctions to exist pursuant to pilot programs, which auctions provide the ability of an options member to submit a customer order along with a contra-side principal order from the options member into a brief price improvement auction in which all members have the ability to compete for the execution.[13] BATS' proposed rule changes are similar in nature to these price improvement auctions, except that under BATS' proposal, competition for the execution with a Directed Order occurs in the context of BATS' continuous, price/time priority auction, rather than during a separate, one-second price improvement auction. As such, concerns about customer orders potentially "missing the market" during that exposure period are not present. That said, however, BATS has proposed to the Commission price improvement data and other data deemed necessary to evaluate the impact of the proposal. Also, as previously mentioned, BATS' proposal differs from existing price improvement auctions due to the fact that BATS Options Market Makers would have no participation guarantees.

The Exchange notes market makers already retain the discretion to pay certain firms non-transparent payment for order flow amounts. The proposal similarly retains that existing discretion for market makers, but provides a mechanism for such payments, or at least a portion of such payments, to be provided in a transparent fashion to the Directed Order in the form of price improvement over the NBBO.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[13] *See, e.g.,* BOX Rule Section 18 "The Price Improvement Period" and ISE Rule 723 "Price Improvement Mechanism for Crossing Transactions" (both of which providing a mechanism for options members that want to internalize customer orders the ability to do so on the exchanges subject to a requirement that such orders first be exposed to all other options members through a brief price improvement auction).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove the 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, as modified by Amendment No.1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–009. 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–BATS–2011–009 and should be submitted on or before April 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7688 Filed 3–31–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64130; File No. SR–NYSEAmex–2011–17]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Rule 346—NYSE Amex Equities and Adopting New Rule 3270—NYSE Amex Equities To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

March 28, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 14, 2011, NYSE Amex LLC (the "SRO" or "NYSE Amex") 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 substantially prepared by the SRO. 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 SRO proposes to delete Rule 346—NYSE Amex Equities and adopt new Rule 3270—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Commission (the "Commission").[4] The text of the proposed rule change is available at the NYSE Amex, at the Commission's Public Reference Room, and on NYSE Amex's Web site at *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Amex 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 SRO 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 purpose of the proposed rule change, to delete Rule 346—NYSE Amex Equities (Limitations—Employment and Association with Members and Member Organizations) and adopt new Rule 3270—NYSE Amex Equities (Outside Business Activities of Registered Persons), is to correspond with rule changes filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessors, the National Association of Securities Dealers, Inc. ("NASD") and NYSE Regulation, Inc. ("NYSER"), consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934, as amended (the "Act"), the New York Stock Exchange LLC ("NYSE"), NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The SRO became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Conforming Amendments to NYSE Amex Equities Rules

FINRA adopted NASD Rule 3030 (Outside Business Activities of an Associated Person), which prohibits any registered person from being employed by or accepting any compensation from any person as a result of any outside business activity, other than passive investments, unless he has provided prompt written notice to his member firm, as consolidated FINRA Rule 3270 requires, subject to certain modifications. FINRA also deleted Incorporated NYSE Rule 346 as it is substantially similar to consolidated FINRA Rule 3270.[7]

To harmonize the NYSE Amex Equities Rules with the approved consolidated FINRA Rules, the SRO correspondingly proposes to delete Rule 346—NYSE Amex Equities and replace it with proposed Rule 3270—NYSE Amex Equities, which is substantially similar to the new FINRA Rule.[8] As proposed, Rule 3270—NYSE Amex Equities adopts the same language as FINRA Rule 3270, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes.

2. Statutory Basis

The SRO believes that the proposed rule changes are consistent with the provisions of Section 6(b) of the Act,[9] in general, and further the objectives of Section 6(b)(5) of the Act,[10] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The SRO believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the SRO has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The SRO does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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 by the SRO with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The SRO has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not

[4] *See* Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (approval order).

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] *See* fn. 4.

[8] The NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSE–2011–12.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The SRO has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The SRO believes that this filing is non-controversial because it raises no novel issues and is consistent with the FINRA rule filing previously approved by the Commission on which it is based.[15] In particular, the purpose of the proposed rule changes is to conform the NYSE Amex Equities Rules to FINRA's adoption of consolidated FINRA Rule 3270 in furtherance of the consolidation of the member firm regulation functions of NYSER and FINRA. Except as specifically noted, and subject to such technical changes as are necessary to apply the Rule to the SRO, NYSE Amex proposes to adopt the rule changes in the form that they were approved by the Commission for FINRA. Accordingly, the SRO believes that these rule changes are eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.[16] The SRO requested an accelerated operative date for the proposed rule changes in order to avoid regulatory gaps between the FINRA and NYSE Amex Equity Rules and to further ensure that, as applicable, the NYSE Amex Equity Rules maintain their status as Common Rules under the Agreement.[17] The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay for this reason, and hereby grants such a waiver.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* fn. 4.

[16] *See* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40143 (July 11, 2008) (concerning 17 CFR 200 and 241).

[17] As provided in paragraph 2(b) of the Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein. *See* fn. 5.

[18] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–17. 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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–17 and should be submitted on or before April 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7651 Filed 3–31–11; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64131; File No. SR–NYSE–2011–12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Rule 346 and Adopting New Rule 3270 To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

March 28, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 14, 2011, New York Stock Exchange LLC ("NYSE" or the "SRO") 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 substantially prepared by the SRO. 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 SRO proposes to delete NYSE Rule 346 and adopt new Rule 3270 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Securities and Exchange Commission (the "Commission").[4] The text of the proposed rule change is available at the NYSE, at the Commission's Public Reference Room, and on NYSE's Web site at *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (approval order).

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 SRO 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 purpose of the proposed rule change, to delete NYSE Rule 346 (Limitations—Employment and Association with Members and Member Organizations) and adopt new Rule 3270 (Outside Business Activities of Registered Persons), is to correspond with rule changes filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessors, the National Association of Securities Dealers, Inc. ("NASD") and NYSE Regulation, Inc. ("NYSER"), consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934, as amended (the "Act"), NYSE, NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Conforming Amendments to NYSE Rules

FINRA adopted NASD Rule 3030 (Outside Business Activities of an Associated Person), which prohibits any registered person from being employed by or accepting any compensation from any person as a result of any outside business activity, other than passive investments, unless he has provided prompt written notice to his member firm, as consolidated FINRA Rule 3270 requires, subject to certain modifications. FINRA also deleted Incorporated NYSE Rule 346 as it is substantially similar to consolidated FINRA Rule 3270.[7]

To harmonize the NYSE Rules with the approved consolidated FINRA Rules, the SRO correspondingly proposes to delete NYSE Rule 346 and replace it with proposed NYSE Rule 3270, which is substantially similar to the new FINRA Rule.[8] As proposed, NYSE Rule 3270 adopts the same language as FINRA Rule 3270, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes.

2. Statutory Basis

The SRO believes that the proposed rule changes are consistent with the provisions of Section 6(b) of the Act,[9] in general, and further the objectives of Section 6(b)(5) of the Act,[10] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The SRO believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the SRO has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The SRO does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Other

No written comments were solicited or received by the SRO with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The SRO has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and is consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The SRO has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The SRO believes that this filing is non-controversial because it raises no novel issues and is consistent with the FINRA rule filing previously approved by the Commission on which it is based.[15] In particular, the purpose of the proposed rule changes is to conform the NYSE Rules to FINRA's adoption of consolidated FINRA Rule 3270 in

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] *See* fn. 4.

[8] NYSE Amex has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSEAmex-2011–17.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* fn. 4.

furtherance of the consolidation of the member firm regulation functions of NYSER and FINRA. Except as specifically noted, and subject to such technical changes as are necessary to apply the Rule to the SRO, NYSE proposes to adopt the rule changes in the form that they were approved by the Commission for FINRA. Accordingly, the SRO believes that these rule changes are eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.[16] The SRO has requested an accelerated operative date for the proposed rule changes in order to avoid regulatory gaps between the FINRA and NYSE Rules and to further ensure that, as applicable, the NYSE Rules maintain their status as Common Rules under the Agreement.[17] The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay for this reason, and hereby grants such a waiver.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–12 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–2011–12. 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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* 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–2011–12 and should be submitted on or before April 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7652 Filed 3–31–11; 8:45 am]

BILLING CODE 8011–01–P

[16] *See* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40143 (July 11, 2008) (concerning 17 CFR 200 and 241).

[17] As provided in paragraph 2(b) of the Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein. *See* fn. 5.

[18] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12499 and #12500]

Indiana Disaster #IN–00035

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated 03/24/2011.

Incident: Severe Storms, Snowmelt and Flooding.

Incident Period: 02/27/2011 through 03/08/2011.

Effective Date: 03/24/2011.

Physical Loan Application Deadline Date: 05/23/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/27/2011.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Delaware, Jay.

Contiguous Counties:

Indiana: Adams, Blackford, Grant, Henry, Madison, Randolph, Wells.

Ohio: Darke, Mercer.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12499 6 and for economic injury is 12500 0.

The States which received an EIDL Declaration # are Indiana; Ohio.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 24, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–7660 Filed 3–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12497 and #12498]

Tennessee Disaster #TN–00048

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Tennessee dated 03/23/2011.

Incident: Severe storms and flooding.

Incident Period: 02/28/2011 and continuing.

Effective Date: 03/23/2011.

Physical Loan Application Deadline Date: 05/23/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2011.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Knox.

Contiguous Counties:

Tennessee: Anderson, Blount, Grainger, Jefferson, Loudon, Roane, Sevier, Union.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12497 6 and for economic injury is 12498 0.

The State which received an EIDL Declaration # is Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 23, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–7662 Filed 3–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12509 and #12510]

Oregon Disaster #OR–00038

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oregon (FEMA–1964–DR), dated 03/25/2011.

Incident: Tsunami Wave Surge.

Incident Period: 03/11/2011.

Effective Date: 03/25/2011.

Physical Loan Application Deadline Date: 05/24/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/27/2011.

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 03/25/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Curry.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12509E and for economic injury is 12510E.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–7794 Filed 3–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12492 and #12493]

Ohio Disaster #OH–00026

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of a disaster for the State of Ohio dated 03/18/2011.

Incident: Severe storms and flooding.

Incident Period: 02/27/2011 through 03/14/2011.

Effective Date: 03/23/2011.

Physical Loan Application Deadline Date: 05/17/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/19/2011.

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 Administrator's disaster declaration in the State of Ohio, dated 03/18/2011, is hereby amended to establish the incident period for this disaster as beginning 02/27/2011 and continuing through 03/14/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 23, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–7663 Filed 3–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12479 and #12480]

New York Disaster Number NY–00102

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 York (FEMA–1957–DR), dated 02/18/2011.

Incident: Severe winter storm and snowstorm.

Incident Period: 12/26/2010 through 12/27/2010.

Effective Date: 03/22/2011.

Physical Loan Application Deadline Date: 04/19/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 11/16/2011.

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 York, dated 02/18/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Columbia, Dutchess, Kings, Rockland.

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. 2011–7661 Filed 3–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12501 and #12502]

Missouri Disaster #MO–00047

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 Missouri (FEMA–1961–DR), dated 03/23/2011.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 01/31/2011 through 02/05/2011.

Effective Date: 03/23/2011.

Physical Loan Application Deadline Date: 05/23/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2011.

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 03/23/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adair, Andrew, Audrain, Barton, Bates, Benton, Boone, Caldwell, Callaway, Carroll, Cass, Cedar, Chariton, Clark, Clinton, Cole, Cooper, Dade, Dallas, Dekalb, Grundy, Henry, Hickory, Howard, Johnson, Knox, Laclede, Lafayette, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Miller, Moniteau, Monroe, Montgomery, Morgan, Newton, Osage, Pettis, Platte, Polk, Pulaski, Putnam, Ralls, Randolph, Ray, Saint Clair, Saline, Schuyler, Scotland, Shelby, Sullivan, Vernon, Worth.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The Number Assigned to This Disaster for Physical Damage is 12501b and for Economic Injury is 12502b.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–7664 Filed 3–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12507 and #12508]

New Mexico Disaster #NM–00020

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Mexico (FEMA–1962–DR), dated 03/24/2011.

Incident: Severe Winter Storm and Extreme Cold Temperatures.

Incident Period: 02/01/2011 through 02/05/2011.

Effective Date: 03/24/2011.

Physical Loan Application Deadline Date: 05/23/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/27/2011.

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 03/24/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lincoln, Otero, Rio Arriba, Sierra, Socorro, Taos and the Tribal jurisdictions of the Mescalero Apache Tribe, Santa Ana Pueblo, Taos Pueblo, and the portions of Santa Clara Pueblo that lie entirely within Rio Arribe County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250

	Percent
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 12507B and for economic injury is 12508B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–7809 Filed 3–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12511 and #12512]

Washington Disaster #WA–00032

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 Washington (FEMA–1963–DR), dated 03/25/2011.

Incident: Severe winter storm, flooding, landslides, and mudslides.

Incident Period: 01/11/2011 through 01/21/2011.

Effective Date: 03/25/2011.

Physical Loan Application Deadline Date: 05/24/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/27/2011.

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 03/25/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: King, Kittitas, Klickitat, Lewis, Skagit, Skamania, Wahkiakum.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12511B and for economic injury is 12512B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–7808 Filed 3–31–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers:

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov;*

(SSA), Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 31, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Representative Payee Report—Adult, Representative Payee Report—Child, Representative Payee Report—Organizational Representative Payees—20 CFR 404.635, 404.2035, 404.2065, and 416.665—0960–0068. When SSA determines it is not in an Old Age Survivors and Disability Insurance (OASDI) or Supplemental Security Income (SSI) recipient's best interest to receive Social Security payments directly, the agency will designate a representative payee for the recipient. The representative payee can be (1) a family member; (2) a non-family member who is a private citizen and is acquainted with the beneficiary; (3) an organization; (4) a state or local government agency; or (5) a business. In this capacity, the person or organization receives the SSA recipient's payments directly and manages these payments. As part of its stewardship mandate, SSA must ensure the representative payees are properly using the payments they receive for the recipients they represent.

The agency annually collects the information necessary to make this assessment using the SSA–623–Representative Payee Report—Adult, SSA–6230–Representative Payee Report—Child, (SSA–6234—Representative Payee Report—Organizational Representative Payees), and through the electronic internet application Internet Representative Payee Accounting (iRPA). The respondents are representative payees of OASDI and SSI recipients.

Type of Request: Revision to an OMB-approved information collection.

Form No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–623	2,378,400	1	15	594,600
SSA–6230	2,875,900	1	15	718,975
SSA–6234	702,100	1	15	175,525
iRPA*	652,500	1	15	163,125
Totals	6,608,900			1,652,225

II. SSA submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than May 2, 2011. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Petition to Obtain Approval of a Fee for Representing a Claimant before the SSA—20 CFR 404.1720 and 404.1725; 20 CFR 416.1520 and 416.1525—0960–0104. A Social Security claimant's representative, whether an attorney or a non-attorney, uses Form SSA–1560–U4 to petition SSA for authorization to charge and collect a fee. A claimant may also use the form to agree or disagree with the requested fee amount or other information the representative provides on the form. The SSA official responsible for setting the fee uses the information from the form to determine a reasonable fee amount representatives may charge for their services. The respondents are attorneys and non-attorneys who represent Social Security claimants.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 48,110.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 24,055 hours.

2. Questionnaire for Children Claiming SSI Benefits—0960–0499. *Section 1631(d)(2)* of the *Social Security Act* gives the agency the authority to collect information needed to determine the validity of an applicant's claim for SSI benefits. Section *20 CFR 416.912(a)* of the *Code of Federal Regulations* states an applicant must furnish medical and other evidence SSA can use to reach conclusions about a child's medical condition. Parents or legal guardians use the SSA–3881–BK to provide SSA with the names and addresses of non-medical sources such as schools, counselors, agencies, organizations, or therapists who would have information about a child's functioning. SSA uses this information to help determine a child's eligibility or continuing eligibility for SSI when conducting a continuing disability review or in the appeals process. The respondents are applicants who appeal SSI childhood disability decisions or recipients undergoing a continuing disability review.

This is a correction notice: SSA published this information collection as an extension on January 28, 2011 at 76 FR 5233. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 253,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 126,500 hours.

3. Electronic Benefit Verification Information (BEVE)—20 CFR 401.40—0960–0595. The electronic proof of income (POI) verification Internet service, BEVE, provides SSI recipients, Social Security beneficiaries, and Medicare beneficiaries the convenience of requesting a POI statement through the Internet. Beneficiaries and SSI recipients often require POI to obtain housing, food stamps, or other public services. After verifying the requester's identity, SSA uses the information from BEVE to provide the POI statement. The respondents are Social Security beneficiaries, Medicare beneficiaries, and SSI recipients.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 870,958.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 72,580 hours.

Dated: March 29, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–7692 Filed 3–31–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7393]

Culturally Significant Objects Imported for Exhibition Determinations: "Boris Mikhailov: Case History"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Boris Mikhailov: Case History," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about May 26, 2011, until on or about September 5, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 25, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–7767 Filed 3–31–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7394]

Culturally Significant Objects Imported for Exhibition Determinations: "The Steins Collect: Matisse, Picasso, and the Parisian Avant-Garde"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "The Steins Collect: Matisse, Picasso, and the Parisian Avant-Garde" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of all of these exhibit objects at the San Francisco Museum of Modern Art, San Francisco, CA, from on or about May 21, 2011, until on or about September 6, 2011, and the temporary display of six of the objects at The Metropolitan Museum of Art, New York, NY, from on or about February 21, 2012, until on or about June 3, 2012, is in the national interest. Also, the temporary display of the objects at possible additional exhibitions or venues yet to be determined is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 25, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–7768 Filed 3–31–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7329]

Announcement of a Meeting of the International Telecommunication Advisory Committee

SUMMARY: This notice announces a meeting of the International Telecommunication Advisory Committee (ITAC) to prepare for the International Telecommunication Union (ITU) World Radiocommunication Conference and the Radiocommunication Assembly.

The ITAC will meet to begin preparation of advice for the U.S. government for the ITU World Radiocommunication Conference (WRC), which will be held in January 23–February 17, 2012 in Geneva, Switzerland. The Radiocommunication Assembly will be held in Geneva the preceding week, January 16–20, 2012.

The ITAC will meet from 10 am to 12 pm on Wednesday, April 21, 2011 at 1200 Wilson Boulevard, Arlington, VA 22209. This meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting. Any requests for reasonable accommodation should be made at least 7 days before the meeting. All such requests will be considered, however, requests made after date might not be possible to fill. Those desiring further information may contact the Secretariat at *jillsonad@state.gov mailto:jillsonad@state.gov* or at 202 647–2592.

Dated: March 25, 2011.

Cecily C. Holiday,

International Communications & Information Policy, U.S. Department of State.

[FR Doc. 2011–7766 Filed 3–31–11; 8:45 am]

BILLING CODE 4710–07–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at March 10, 2011, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: As part of its regular business meeting held on March 10, 2011, in Huntingdon, Pennsylvania, the Commission convened a public hearing, at which took the following actions: (1) Approved, tabled and terminated application review of certain water resources projects; (2) rescinded approval for ten water resources projects; and (3) declined a request for it to reopen Docket No. 20091201 issued to Chesapeake Appalachia, LLC.

DATES: March 10, 2011.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net;* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: (1) Presentation on the Morrison Cove Water Resources Study; (2) hydrologic conditions in the basin; (3) administrative approval of flowback reuse involving diversions policy; (4) approval/ratification of contracts; (5) a demonstration of the Commission's web-based Water Resources Portal; (6) an explanation of the contents and conditions of a typical Commission docket approval; (7) an administrative fee authorization for group transfers of approvals; (8) adoption of a Migratory Fish Management and Restoration Plan for the Susquehanna River Basin; (9) authorization to initiate the National Environmental Policy Act (NEPA) phase of the Cowanesque and Curwensville Lakes Low Flow Operations Change; and (10) revision of the FY–2012 budget along with expansion of the Compliance Reserve Fund and creation of a Capital Reserve Fund. The Commission heard counsel's report on legal matters affecting the Commission. The Commission also convened a public hearing and took the following actions:

Public Hearing—Rescissions of Project Approval

1. Project Sponsor and Facility: Chief Oil & Gas LLC (Sugar Creek) (Docket No. 20090314), West Burlington Township, Bradford County, Pa.
2. Project Sponsor and Facility: Range Resources—Appalachia, LLC (Lycoming Creek-1) (Docket No. 20080933), Hepburn Township, Lycoming County, Pa.
3. Project Sponsor and Facility: Range Resources—Appalachia, LLC (West Branch Susquehanna River) (Docket No. 20080940), Colebrook Township, Clinton County, Pa.

4. Project Sponsor and Facility: Southwestern Energy Company (Cold Creek) (Docket No. 20090909), Herrick Township, Bradford County, Pa.
5. Project Sponsor and Facility: Southwestern Energy Company (Mill Creek) (Docket No. 20090910), Stevens Township, Bradford County, Pa.
6. Project Sponsor and Facility: Southwestern Energy Company (Ross Creek) (Docket No. 20090911), Stevens Township, Bradford County, Pa.
7. Project Sponsor and Facility: Southwestern Energy Company (Tunkhannock Creek) (Docket No. 20090913), Gibson Township, Susquehanna County, Pa.
8. Project Sponsor and Facility: Southwestern Energy Company (Wyalusing Creek) (Docket No. 20090915), Wyalusing Township, Bradford County, Pa.
9. Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek) (Docket No. 20091208), Lewis Township, Lycoming County, Pa.
10. Project Sponsor and Facility: SVC Manufacturing, Inc. (Docket No. 19920907), Fairview Township, Luzerne County, Pa.

Public Hearing—Projects Approved

1. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River), Colebrook Township, Clinton County, Pa. Surface water withdrawal of up to 1.500 mgd.
2. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River-3), Nippenose Township, Lycoming County, Pa. Modification to increase maximum instantaneous pumping rate within approved daily rate.
3. Project Sponsor and Facility: Cedar Rock Materials Corp., Salem Township, Luzerne County, Pa. Groundwater withdrawal of up to 0.720 mgd and consumptive water use of up to 0.700 mgd from Well PW–1.
4. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Braintrim Township, Wyoming County, Pa. Surface water withdrawal of up to 3.000 mgd.
5. Project Sponsor and Facility: Chief Oil & Gas LLC (Martins Creek), Hop Bottom Borough, Susquehanna County, Pa. Surface water withdrawal of up to 0.360 mgd.
6. Project Sponsor: Dean Dairy Holdings, LLC. Project Facility: Swiss Premium Dairy, Inc., North Cornwall Township, Lebanon County, Pa. Modification to increase consumptive water use of up to 0.200 mgd.
7. Project Sponsor and Facility: East Donegal Township Municipal Authority, East Donegal Township, Lancaster County, Pa. Groundwater withdrawal of up to 0.260 mgd from Well 1.
8. Project Sponsor: Hazleton Creek Properties, LLC. Project Facility: Hazleton Mine Reclamation, Hazleton City, Luzerne County, Pa. Groundwater withdrawal of up to 0.055 mgd from Well MP–1 and consumptive water use of up to 0.055 mgd.
9. Project Sponsor and Facility: J–W Operating Company (Plum Grove Cameron 5 Strip Mine Pond), Shippen Township, Cameron County, Pa. Surface water withdrawal of up to 0.090 mgd.
10. Project Sponsor and Facility: Novus Operating, LLC (Tioga River), Covington Township, Tioga County, Pa. Surface water withdrawal of up to 1.750 mgd.
11. Project Sponsor and Facility: Peoples Financial Services Corp. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Surface water withdrawal of up to 0.999 mgd.
12. Project Sponsor and Facility: Range Resources—Appalachia, LLC (West Branch Susquehanna River), Piatt Township, Lycoming County, Pa. Surface water withdrawal of up to 3.000 mgd.
13. Project Sponsor and Facility: Southwestern Energy Company (Martins Creek), Brooklyn and Harford Townships, Susquehanna County, Pa. Surface water withdrawal of up to 0.997 mgd.
14. Project Sponsor and Facility: Southwestern Energy Company (Tuscarora Creek), Tuscarora Township, Bradford County, Pa. Surface water withdrawal of up to 0.500 mgd.
15. Project Sponsor: Texas Eastern Transmission LP (Susquehanna River), East Donegal Township, Lancaster County, Pa. Surface water withdrawal of up to 2.304 mgd.
16. Project Sponsor and Facility: Victory Energy Corporation (Pine Creek), Pike Township, Potter County, Pa. Surface water withdrawal of up to 0.460 mgd.

Public Hearing—Projects Approved Involving A Diversion

1. Project Sponsor: Pennsylvania General Energy Company, L.L.C. Project Facility: Scaffold Lick Pond—1, Liberty Township, McKean County, Pa. Into-basin diversion of up to 0.500 mgd from the Ohio River Basin.
2. Project Sponsor: Pennsylvania General Energy Company, L.L.C. Project Facility: Scaffold Lick Pond—2, Liberty Township, McKean County, Pa. Into-basin diversion of up to 0.500 mgd from the Ohio River Basin.
3. Project Sponsor: Ultra Resources, Inc. Project Facility: Wayne Gravel Products Quarry, Ceres Township, McKean County, Pa. Into-basin diversion of up to 1.170 mgd from the Ohio River Basin.

Public Hearing—Project Tabled

1. Project Sponsor and Facility: Ephrata Area Joint Authority, Ephrata Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.210 mgd from Well 1.

Public Hearing—Review of Project Application Terminated

1. Project Sponsor and Facility: Airy View Heights, Inc., Centre Township, Perry County, Pa. Application for groundwater withdrawal of up to 0.465 mgd from Well PW–5.

Public Hearing—Project Withdrawn

1. Project Sponsor and Facility: ALTA Operating Company, LLC (DuBois Creek), Great Bend Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

Public Hearing—Request of Marvin Fetterman to Reopen Docket No. 20091201

The Commission declined a request of Mr. Marvin Fetterman for it to reopen Docket No. 20091201 issued to Chesapeake Appalachia, LLC.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR parts 806, 807, and 808.

Dated: March 23, 2011.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2011–7712 Filed 3–31–11; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Kissimmee Gateway Airport, Kissimmee, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted for Kissimmee Gateway Airport under the provisions of 49 U.S.C. 47504 *et seq.* (the Aviation Safety and Noise Abatement Act hereinafter referred to as "the Act") and 14 CFR Part 150 by the City of Kissimmee. This program was submitted subsequent to a determination by FAA that the associated Noise Exposure Maps submitted under 14 CFR Part 150 for Kissimmee Gateway Airport were in compliance with applicable requirements effective 12/11/09, and was published in the **Federal Register** on 12/29/09. The proposed Noise Compatibility Program will be approved or disapproved on or before September 27, 2011.

DATES: *Effective Date:* The effective date of the start of FAA's review of the associated Noise Compatibility Program is April 1, 2011. The public comment period ends May 30, 2011.

FOR FURTHER INFORMATION CONTACT: Allan Nagy, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, 407–812–6331. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Kissimmee Gateway Airport which will be approved or disapproved on or before September 27, 2011. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Title 14 Code of Federal Regulations (CFR) Part 150, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the Noise Compatibility Program for Kissimmee Gateway Airport, effective on April 1, 2011. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under Section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 27, 2011.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, on March 28, 2011.

Bart Vernace,

Acting Manager, Orlando Airports District Office.

[FR Doc. 2011–7813 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2011–001–N–4]

Proposed Agency Information Collection Activities; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 31, 2011.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number ____ ." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6479, or via e-mail to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kimberly.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–

20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

OMB Control Number: 2130–0035.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Abstract: The collection of information is due to the railroad operating rules set forth in 49 CFR part 217 which require Class I and Class II railroads to file with FRA copies of their operating rules, timetables, and timetable special instructions, and subsequent amendments thereto. Class III railroads are required to retain copies of these documents at their systems headquarters. Also, 49 CFR 220.21(b) prescribes the collection of information which requires railroads to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. These documents must be made available to FRA upon request. Through these rules, FRA learns the condition of operating rules and practices with respect to trains and instructions provided by the railroad to their employees in operating practices.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
217.7—Copy—FRA—Operating rules, timetables, Class I & II RRs.	1 new railroad	1 submission	1 hour	1
—Amendments	55 railroads	165 amendments	20 Minutes	55
—Copy of operating rules—Class III	20 new railroads	20 submissions	55 Minutes	18
—Amendments	632 railroads	1,896 amendments	15 Minutes	474
217.9—Railroad and Railroad Testing Officer Responsibilities.	687 railroads	4,732 field trained officers/training sessions.	8 hours	37,856
—Records	687 railroads	4,732 records	2 minutes	158
Copy—Prog. for Perf. of Operational Tests	20 new railroads	20 Programs	9.92 hours	198
—Records of Operational Tests/Inspections	687 railroads	9,180,000 records	5 minutes	765,000
—Amendments	55 railroads	165 amendments	1.92 hours	317
—Quarterly Review of Accident/Incident Data/Prior Op. Tests/Insp.	687 railroads	148 reviews	1 hour	148
—Designated Officers & Conduct of 6 Mo. Rev.	687 railroads	37 designations + 74 reviews.	5 seconds + 1 hour	74
—Designated Officers & Conduct of Six Month Review by Passenger/Commuter Railroads.	687 railroads	20 designations + 34 reviews.	5 seconds + 1 hour	34
—Records of Periodic Reviews	687 railroads	589 review records	1 minute	10
—Annual Summary on Operational Tests/Insp.	687 railroads	37 summary records	61 minutes	38
—FRA Disapproval of RR Program of Operational Tests/Insp. & Response by RR.	687 railroads	20 supporting documents.	1 hour	20
—Amended Prog. Docs.	687 railroads	20 amended documents.	30 minutes	10
271.11—Instruction of Program Employees	687 railroads	130,000 instr. employees.	8 hours	1,040,000
—New RR & Copy of Program of Op. Tests	20 new railroads	20 Programs	8 hours	160
—Amendments to Op. Rules Instr. Program	687 railroads	220 amendments	55 minutes	202
218.95—Instruction, Training, Examination—Records.	687 railroads	98,000 records	5 minutes	8,167
—Response to FRA Disapproval of Program.	687 railroads	50 written/oral submissions.	1 hour	50
—Programs Needing Amendment	687 railroads	20 amended programs	30 minutes	10
218.97—Written Procedures on Good Faith Challenges by Employees Re: Actions.	687 railroads	687 written procedures	2 hours	1,374
—Employee Copy of Written Procedures	687 railroads	130,000 copies	6 minutes	13,000

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Employee Copy of Amended Procedures	687 railroads	130,000 copies	3 minutes	6,500
—Good Faith Challenges by RR Employees	98,000 RR Employees	15 challenges	10 minutes	3
—RR Responses to Empl. Challenge	687 railroads	15 responses	5 minutes	1
—Immediate Review of Employee Challenge.	687 railroads	5 immediate reviews	15 minutes	1
—RR Officer Explanation of Federal Law Protection Against Retaliation.	687 railroads	5 explanations	1 minute	.08
—Documented Protest by RR Employee	687 railroads	10 written protests	15 minutes	3
—Copies of Protests	687 railroads	10 protest copies	1 minute	.17
—Further Reviews	687 railroads	3 further reviews	15 minutes	1
—Written Verification Decision to Employee	687 railroads	10 verification decisions	10 minutes	2
—Copy of Written Procedures at RR Hdtrs	687 railroads	760 copies of procedures.	5 minutes	63 hours
—Copy of Verification Decision at RR Headquarters & Division Headquarters.	687 railroads	20 verification decision copies.	5 minutes	2
218.99—Shoving or Pushing Movements:				
—Operating Rule Modifications	687 railroads	687 rule modifications	1 hour	687
—Locomotive Engineer Job Briefing Before Movement.	100,000 RR Employees	60,000 job briefings	1 minute	1,000
—Point Protection Determinations & Signals/Instructions to Control Movements.	100,000 RR Employees	87,600,000 determinations + 87,600,000 signals/instructions.	1 minute + 1 minute	2,920,000
—Remote Control Movements-Verbal Confirmation.	100,000 RR Employees	876,000 confirmations	1 minute	14,600
—Remote Control Determinations That Zone Is Not Jointly Occupied/Track Clear.	100,000 RR Employees	876,000 determinations	1 minute	14,600
—Dispatcher Authorized Train Movements	6,000 RR Dispatchers	30,000 auth. movements.	1 minute	500
—Written Procedures to Determine Track Occupancy.	687 railroads	41 written procedures	30 minutes	21
—Track Location—Designation	687 railroads	41 track designations	30 minutes	21
218.101—Operating Rule Re: Leaving Rolling & On-Track MOW Equipment in the Clear.	687 railroads	687 amended op. rules	30 minutes	344
218.103—Hand-Operated Switches—RR Operating Rule That Complies with 218.103.	687 railroads	687 modified operating rules.	1 hour	687
—Specification of Minimum Job Briefing Requirements.	687 railroads	632 modified op. rules	30 minutes	316
—Employee Operating or Verifying Position of Hand-operated Switches: Job Briefings.	687 railroads	1,125,000 job briefings	1 minute	18,750
218.105—Additional Requirements for Hand Operated Main Track Switches—Job Briefing.	687 railroads	60,000 job briefings	1 minute	1,000
—Roadway Worker Report on Position of Switches to Roadway Worker in Charge (RWIC) or Designated Employee Conveying Information to RWIC.	687 railroads	100,000 empl. reports + 100,000 conveyances.	1 minute + 1 minute	3,334
—Dispatcher Acknowledgment of Switch Position and Employee Confirmation to Train Dispatcher.	687 railroads	60,000 acknowledgment + 60,000 confirmations.	30 seconds + 5 seconds.	583
218.109—Hand Operated Fixed Derails: Job Briefings.	687 railroads	562,500 hours	30 seconds	4,688

Total Estimated Responses: 188,794,835.

Total Estimated Annual Burden: 4,855,081 hours.

Status: Regular Review.

Title: Roadway Worker Protection.

OMB Control Number: 2130–0539.

Abstract: This rule establishes regulations governing the protection of railroad employees working on or near railroad tracks. The regulation requires that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. Elements of this on-track safety program include an on-track safety manual; a clear delineation of employers' responsibilities, as well as employees' rights and responsibilities thereto; well- defined procedures for communication and protection; and annual on-track safety training. The program adopted by each railroad is subject to review and approval by FRA.

Form Number(s): FRA 6180.119.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Form FRA F 6180.119 —RR Workplace Safety Violation Report Form.	350 Safety Inspectors	150 report forms	4 hours	600
214303/309—On-Track Safety Programs.				

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Amendments to Program	60 railroads + 584 railroads.	20 amended programs + 584 amended prog..	20 hours; 4 hours	2,736
—Subsequent Years: New Programs	5 railroads	5 safety programs	250 hours	1,250
214.313—Roadway Worker Challenge to Directive.	20 railroads	80 challenges	4 hours	320
214.315/335—Supervision and Communication—Job Briefings.	50,000 Roadway Workers.	16,350,000 briefings	2 minutes	545,000
214.321—Exclusive Track Occupancy: Written Authorities.	8,583 Employees/Roadway Workers.	700,739 written authorities.	1 minute	11,679
214.325—Train Coordination: Roadway Worker Communication with Train Crew.	50,000 Roadway Workers.	36,500 communications	15 seconds	152
214.327—Inaccessible Track: Establishment and Direction by Roadway Worker in Charge.	703 railroads	50,000 occurrences	10 minutes	8,333
214.337—On-Track Safety for Lone Workers	703 railroads	2,080,000 statements	30 seconds	17,333
—Written Statement of On-Track Safety by Lone Worker.				
214.343/345347/349/351/353/355—Training	50,000 Roadway Workers.	50,000 trained employees.	4.50 hours	225,000
—Training Records	50,000 Roadway Workers.	50,000 records	2 minutes	1,667
214.503—Good Faith Challenges—Notification	50,000 Roadway Workers.	125 notifications	10 minutes	21
—Resolution Procedures	644 railroads	10 procedures	2 hours	20
214.505—List of New/Designated Existing On-Track Roadway Maintenance Machines Conforming with Paragraph (a) of This Section.	644 railroads	9 lists	1 hour	9
214.507—Built Light Weight Displayed on Each New Roadway Maintenance Machine (RMM).	644 railroads	1,000 stickers/stencils	5 minutes	83
214.511—Clearly Identifiable Horn Triggering Mechanism on Each New RMM.	644 railroads	3,700 identified mechanisms.	5 minutes	308
214.513—Clearly Identifiable Horn Triggering Mechanism on Each Existing RMM.	703 railroads	200 identified mechanisms.	5 minutes	17
214.515—Overhead Covers for Existing RMMs—Requests and RR Responses.	644 railroads	500 employee requests + 500 RR responses.	10 minutes + 20 minutes.	250
214.517—Display of Light Weight on Existing RMMs.	644 railroads	500 stencils/displays	5 minutes	42
214.518—Safe and Secure Position on On-Track RMMs—Clearly Identified.	644 railroads	1,000 stencils/marks/notices.	5 minutes	83
214.523–Hi-Rail Vehicles—Inspections and Records.	644 railroads	2,000 inspections/records.	1 hour	2,000
—Tagging and Reporting Non-compliant Conditions.	644 railroads	500 tags + 500 reports	10 minutes + 15 minutes.	208
214.527—On-Track RMMs—Tagging and Reporting of Non-complying Conditions.	644 railroads	550 tags + 550 reports	5 minutes + 15 minutes	184
214.533—Schedule of Repairs for Hi-Rail Vehicles and RMMs—Compliance Records.	644 railroads	250 records	15 minutes	63

Total Estimated Responses: 19,329,972.

Total Estimated Annual Burden: 817,358 hours.

Status: Regular Review.

OMB Control Number: 2130–0552.

Title: Locomotive Cab Sanitation Standards.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Abstract: The collection of information is used by FRA to promote rail safety and the health of railroad workers by ensuring that all locomotive crew members have access to toilet/sanitary facilities—on as needed basis—which are functioning and hygienic. Also, the collection of information is used by FRA to ensure that railroads repair defective locomotive toilet/sanitary facilities within 10 calendar days of the date on which these units becomes defective.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.137(d)—Defective Locomotive Toilet Facility—Tagging.	744 railroads	11,700 tags/notices	90 seconds	293
229.137(e) Defective But Sanitary Locomotive Toilet Facility—Tagging.	744 railroads	7,956 tags/notices	90 seconds	199
229.137(f) Switching or Transfer Service—Defective Locomotive Toilet Facility—Notation on Daily Inspection Report.	744 railroads	93,600 notations	30 seconds	780

Total Estimated Responses: 113,256.

Total Estimated Annual Burden: 1,272 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 25, 2011.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–7463 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Availability of a Final Environmental Impact Statement for the DesertXpress High-Speed Passenger Train Project

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

ACTION: Notice.

SUMMARY: FRA is issuing this notice to advise the public that a Final Environmental Impact Statement (EIS) is being published for the DesertXpress High-Speed Passenger Train Project (DesertXpress project). FRA is the Lead Agency for the environmental review process and has prepared the Final EIS consistent with the provisions of Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Counsel of Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 *et seq.*), and FRA's Procedures for Considering Environmental Impacts (64 FR 28545, May 26, 1999). The Bureau of Land Management (BLM), Surface Transportation Board (STB), Federal Highway Administration (FHWA), and the National Park Service (NPS) coordinated with the FRA as Cooperating Agencies for the DesertXpress project environmental review process.

DesertXpress Enterprises Inc., the DesertXpress project proponent or Applicant, proposes to construct and operate a fully grade-separated, dedicated double-track, passenger-only railroad along an approximately 200-mile corridor, from Victorville, California, to Las Vegas, Nevada. The Preferred Alternative rail alignment would generally be immediately adjacent to the Interstate 15 (I–15) freeway travel lanes within the existing Interstate 15 (I–15) right-of-way (ROW). The Preferred Alternative also includes passenger station and maintenance facility sites in Victorville and greater Las Vegas.

DATES: Written comments on the Final EIS for the DesertXpress project will be accepted until April 18, 2011. Written comments on the Final EIS may be sent to: Ms. Wendy Messenger, Attn: DesertXpress EIS, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 or via e-mail at *Wendy.Messenger@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Messenger, Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 or via e-mail at *Wendy.Messenger@dot.gov* (telephone 202–493–6396).

SUPPLEMENTARY INFORMATION: The DesertXpress project would involve the construction and operation of an interstate high-speed passenger train system between Victorville, California and Las Vegas, Nevada, along an approximately 200-mile corridor. The purpose of the DesertXpress project is to provide reliable and safe passenger rail transportation between southern California and Las Vegas using proven high-speed rail technology that results in a convenient alternative to automobile or air travel that also adds transportation capacity to the I–15 freeway corridor. The need for the DesertXpress project stems from several factors, including but not limited to high and increasing travel demand on I–15—the only major roadway linking southern California to Las Vegas having limited opportunities to increase capacity. Other factors include constraints on the expansion of air travel from southern California and an above-average automobile accident rate on the I–15 freeway.

In March 2009, FRA, in coordination with the Cooperating Agencies, published a Draft EIS and circulated the document for a 56-day public and agency review and comment period. The Draft EIS analyzed a No Action Alternative and various Action Alternatives for the construction and operation of the DesertXpress high-speed passenger train. The Action Alternatives included multiple options for rail alignments, passenger stations, maintenance facilities, and locomotive technologies. The Draft EIS was structured to allow the Lead and Cooperating Agencies to compose a Preferred Alternative from the various options. FRA convened three public hearings on the Draft EIS, held in Las Vegas, Barstow, and Victorville on April 28, April 29, and April 30, 2009, respectively.

Following publication of the Draft EIS, the Applicant proposed several modifications and additions to the Action Alternatives presented in the Draft EIS, based upon substantive comments received during public and agency review and to reduce or avoid significant potential environmental impacts. The project modifications and additions included a new Victorville passenger station site, a new rail alignment through central Barstow within the I–15 freeway corridor, a new rail alignment through the Clark Mountains, new sites for maintenance facilities in unincorporated Clark County, and minor shifts in the rail alignment to avoid or reduce potential environmental impacts or improve operating characteristics.

After evaluating the proposed project modifications and additions, FRA determined, pursuant to 40 CFR 1502.9, that it was necessary to prepare a Supplemental Draft EIS to analyze the potential environmental impacts of the project modifications and additions. The FRA and the Cooperating Agencies published the Supplemental Draft EIS in September 2010 and circulated the document for a 46-day public and agency review and comment period. FRA convened two public hearings on the Supplemental Draft EIS in the Las Vegas and Barstow areas on October 13 and October 14, 2010, respectively.

The FRA and the Cooperating Agencies considered the entire record and compared the potential environmental impacts of the action alternatives as well as the no action alternative to select the Preferred Alternative. The Preferred Alternative rail alignment would be almost entirely located within the existing I–15 corridor, with tracks running alongside freeway travel lanes. The Preferred Alternative also identifies station and maintenance facility sites and selects Electrical Multiple Unit (EMU) as the preferred locomotive technology.

In accordance with regulations implementing NEPA, the Final EIS evaluates the environmental effects associated with the Preferred Alternative compared to the other

Action Alternatives and the No Action Alternative and identifies appropriate mitigation measure to minimize the potential environmental impacts. The Final EIS also includes amendments to the Draft EIS and Supplemental Draft EIS to both reflect updated information since publication of the previous documents and to address certain comments received during the respective public and agency comment periods (40 CFR 1502.9(b)).

Pursuant to 40 CFR 1506.10, the Final EIS will be circulated for a 30-day period commencing on the date the Environmental Protection Agency's notice of availability is published in the **Federal Register**. The Lead and Cooperating Agencies will each issue a Record of Decision on the proposed action, pursuant to 40 CFR 1505.2 and 1506.10. Each Record of Decision will explain each agency's decision on the proposed action and explain factors considered in reaching the decision and will describe appropriate mitigation measures to minimize potential environmental impacts.

Prior to issuing a Record of Decision on the proposed project, FRA and the Cooperating Agencies will consider written comments on this Final EIS provided such comments are received by May 2, 2011. Written comments on this Final EIS should be sent to the Federal Railroad Administration by mail addressed to: Attn: DesertXpress, Ms. Wendy Messenger, Federal Railroad Administration, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590.

Copies of the Final EIS are available online at FRA's Web site: *http://www.fra.dot.gov;* they are also available for viewing at the following locations near the planned rail system:

- Victorville City Library, 15011 Circle Drive, Victorville, CA 92395
- Barstow Library, 304 East Buena Vista, Barstow, CA 92311
- Las Vegas Library, 833 Las Vegas Blvd. N., Las Vegas, NV 80101
- Clark County Library, 1401 E. Flamingo Road, Las Vegas, NV 89119

Issued in Washington, DC, on March 23, 2011.

Karen J. Rae,

Deputy Administrator.

[FR Doc. 2011–7665 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2011–0032]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SARAH BESS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0032 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 2, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0032. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SARAH BESS is:

Intended Commercial Use of Vessel: "Charter boat to take passengers on multi-day excursions."

Geographic Region: "New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 22, 2011.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–7713 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2011 0034]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DUTCHESS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is

listed below. The complete application is given in DOT docket MARAD–2011–0034 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 2, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0034. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant, the intended service of the vessel DUTCHESS is:

Intended Commercial Use of Vessel: "Private charters for small wedding parties and the like in Western Puget sound waters. KHT currently owns and/or operates 4 small passengers vessels ranging in size from 28–150 passengers but these vessels are not appropriate for small groups who want a private and more luxurious charter. Currently we turn those requests away as there is no other provider of such small/luxury charter services in this area."

Geographic Region: "Washington."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 21, 2011.

By order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–7715 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2011 0031]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PEARKES.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0031 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 2, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0031. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PEARKES is:

Intended Commercial Use of Vessel: "Recreational scuba diving charters and personal use."

Geographic Region: "California."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 22, 2011.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–7716 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2011 0033]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RED GYPSY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0033 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 2, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0033. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RED GYPSY is:

Intended Commercial Use of Vessel: "Sunset Cruise, day trips for charter, possible fishing charter. Boat skill training."

Geographic Region: "ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, DC, VA, NC, SC, GA, FL".

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 22, 2011.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–7717 Filed 3–31–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for HCTC Program Forms

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 13865, Health Coverage Tax Credit (HCTC) Paper Check Request and Form 13929, Health Coverage Tax Credit (HCTC) Administrative Change Form.

DATES: Written comments should be received on or before May 31, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ralph Terry, (202) 622–8144, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Ralph.M.Terry@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit (HCTC)—Paper Check Request, Health Coverage Tax Credit (HCTC)—Administrative Change Form.

OMB Number: 1545–2118.

Form Number: Form 13928, and Form 13865.

Abstract: These forms are used to help manage the HCTC program. Health plan administrators will use these forms to submit requests of; changes to their account information, waivers from the Federal requirement that mandates all payments to be made via Electronic Funds Transfer (EFT), and to provide the required registration information into the HCTC program.

Current Actions: There are changes in the paperwork burden previously approved by OMB and also being submitted for renewal.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 700.

Estimated Time per Respondent: 35 minutes.

Estimated Total Annual Burden Hours: 410.

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: March 25, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–7669 Filed 3–31–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 76 Friday,

No. 63 April 1, 2011

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Federal Acquisition Circular 2005–51; Introduction; Women-Owned Small Business (WOSB) Program; Clarification of Standard Form 26—Award/Contract; Small Entity Compliance Guide; Final and Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0076, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–51; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by DoD, GSA, and NASA in this Federal Acquisition Circular (FAC) 2005–51. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–51 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–51

Item	Subject	FAR case	Analyst
I	Women-Owned Small Business (WOSB) Program (Interim)	2010–015	Morgan.
II	Clarification of Standard Form 26—Award/Contract	2009–029	Jackson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–51 amends the FAR as specified below:

Item I—Women-Owned Small Business (WOSB) Program (FAR Case 2010–015) (Interim)

This interim rule amends the FAR to add subpart 19.15, Women-Owned Small Business Program, which will assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small business (WOSB) concerns.

Agencies may restrict competition to economically disadvantaged women-owned small business (EDWOSB) concerns for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration has determined that WOSB concerns are underrepresented in Federal procurement. For NAICS code industries where WOSB concerns are not just underrepresented, but substantially underrepresented, agencies may restrict competition to WOSB concerns eligible under the WOSB Program.

EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be owned and controlled by one or more women who are citizens of the United States. An EDWOSB concern is automatically a WOSB concern eligible under the WOSB Program.

Item II—Clarification of Standard Form 26—Award/Contract (FAR Case 2009–029)

This final rule amends the FAR to revise FAR part 53 to amend the Standard Form (SF) 26, Award/Contract, above blocks 17 and 18 and in block 18 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed bid contract. The changes will not prevent contracting officers from using block 17 of the SF 26 when awarding negotiated procurements in which the signature of both parties, on a single document, is required; it will only prohibit them from using block 18 of the SF 26 when awarding negotiated procurements.

Dated: March 24, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Federal Acquisition Circular (FAC) 2005–51 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–51 is effective April 1, 2011, except for Item II which is effective May 2, 2011.

Dated: March 23, 2011.

Richard Ginman,

Deputy Director, Defense Procurement and Acquisition Policy (Contingency Contracting and Acquisition Policy).

Dated: March 23, 2011.

Joseph A. Neurauter,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: March 18, 2011.

Leigh Pomponio,

Procurement Analyst, National Aeronautics and Space Administration.

[FR Doc. 2011–7367 Filed 3–31–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53

[FAC 2005–51; FAR Case 2010–015; Item I; Docket 2010–0015, Sequence 1]

RIN 9000–AL97

Federal Acquisition Regulation; Women-Owned Small Business (WOSB) Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's regulations establishing the Women-Owned Small Business Program.

DATES: *Effective Date:* April 1, 2011.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before May 31, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–51, FAR Case 2010–015, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010–015" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010–015." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010–015" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–51, FAR Case 2010–015, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–51, FAR Case 2010–015.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR, to implement changes to the Small Business Administration (SBA) regulations at 13 CFR part 127, entitled "Women-Owned Small Business Federal Contract Program" and implements procedures that were authorized by the Small Business Act (Pub. L. 85–536, as amended). The Small Business Act assists in leveling the procurement playing field to enable small business concerns, including women-owned small business (WOSB) concerns and economically disadvantaged women-owned small business (EDWOSB) concerns, to compete for Federal contracting opportunities.

On December 21, 2000, Congress enacted the Small Business Reauthorization Act of 2000 ("Act") (Pub. L. 106–554). Section 811 of Appendix I of the Act amended the Small Business Act to include section 8(m), which authorized the restriction of competition for Federal contracts in certain industries to EDWOSB concerns or WOSB concerns eligible under the WOSB Program. SBA published a final rule implementing the program on October 7, 2010 (75 FR 62258), which became effective February 4, 2011.

This interim rule provides the contracting community additional resources to meet the Government's procurement needs. The addition of FAR subpart 19.15 incorporates coverage of the Women-Owned Small Business Program. The rule defines "Women-Owned Small Business Program (WOSB Program)", "women-owned small business (WOSB) concern eligible under the WOSB Program", and "economically disadvantaged women-owned small business (EDWOSB) concern".

- To qualify as a WOSB concern eligible under the WOSB Program, the concern must be—
  - A small business as defined in 13 CFR part 121 in its primary industry classification; and
  - Not less than 51 percent directly and unconditionally owned by, and the management and daily operations controlled by, one or more women who are citizens of the United States.
- To qualify as an EDWOSB concern, the concern must be—
  - A small business as defined in 13 CFR part 121 in its primary industry classification; and
  - Not less than 51 percent directly and unconditionally owned by, and the management and daily operations controlled by, one or more women who are citizens of the United States and who are economically disadvantaged. A woman is economically disadvantaged if she can demonstrate certain income, asset, and other limitations established in SBA regulations.

Contracting officers may restrict competition in those industries where SBA has determined that WOSB concerns or EDWOSB concerns are underrepresented. For a North American Industry Classification System (NAICS) code in an underrepresented industry, the contracting officer may set aside for EDWOSB concerns. For a NAICS code in a substantially underrepresented industry, the contracting officer may set aside for EDWOSB concerns, or set aside for WOSB concerns that are eligible under the WOSB Program. An EDWOSB concern is automatically an eligible WOSB concern.

The contracting officer must expect that two or more concerns will submit offers; contract award will be made at a fair and reasonable price; and the anticipated award price of the contract (including options) will not exceed $6.5 million in the case of a contract assigned a NAICS code for manufacturing, or $4 million, in the case of all other contracts. These figures are higher than the statute and SBA regulation figures because they are adjusted for inflation (see FAR 1.109).

The rule also provides a protest process and procedures for interested parties to challenge the size and status of a WOSB or EDWOSB concern. A protest of the size and status does not preclude the contracting officer from awarding the contract. The FAR allows for the contracting officer to award a contract after receipt of a protest if the contracting officer determines in writing that there is an immediate need or significant harm would result in the event the award is not made.

II. Executive Order 12866 and 13563

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD, GSA, and NASA determined that this rule is not excessively burdensome to the public, and is consistent with the SBA's Women-Owned Small Business Federal Contract Program.

III. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.,* because this rule requires small business concerns that claim to be WOSB or EDWOSB concerns to demonstrate their status. However, this rule provides Federal agencies the tools to expand opportunities for women-owned small business concerns to compete for Federal contracts, thereby, creating a positive economic impact on WOSB concerns. SBA performed a Final Regulatory Flexibility Analysis, in its final rule published in the **Federal**

Register at 75 FR 62258, October 7, 2010, effective February 4, 2011. Based on SBA's recent analysis, it is anticipated that further analysis will not provide different data from the analysis performed by SBA. Therefore, SBA's data was used to support our analysis.

The Regulatory Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–51, FAR Case 2010–015) in correspondence.

The analysis is summarized as follows:

1. What are the reasons for, and objectives of, this interim rule?

DoD, GSA, and NASA are establishing procedures pursuant to the Small Business Reauthorization Act of 2000 (Pub. L. 106–554), enacted December 21, 2000. The purpose of the interim rule is to provide a tool for Federal agencies to ensure equal opportunity, and thereby increased Federal procurement opportunities to women-owned small business (WOSB) concerns. DoD, GSA, and NASA are implementing this interim rule pursuant to section 8(m) of the Small Business Act, 15 U.S.C. 637(m). These procedures will assist Federal agencies in eliminating barriers to the participation by WOSB concerns in Federal contracting, thereby achieving the Federal Government's goal of awarding five percent of Federal contract dollars to WOSB concerns, as provided in the Federal Acquisition Streamlining Act of 1994.

2. What is the legal basis for this interim rule?

On December 21, 2000, Congress enacted the Small Business Reauthorization Act of 2000 ("Act") (Pub. L. 106–554). Section 811 of Appendix I of the Act amended the Small Business Act to include section 8(m), which authorized the restriction of competition for Federal contracts in certain industries to economically disadvantaged women-owned small business (EDWOSB) concerns or WOSB concerns eligible under the WOSB Program. The Small Business Administration published its WOSB final rule in the **Federal Register** October 7, 2010 (75 FR 62258).

3. What is the description and estimate of the number of small entities to which the rule will apply?

This rule may positively affect EDWOSB concerns that participate in Federal procurement in industries where SBA determines that WOSB concerns are underrepresented and may positively affect WOSB concerns eligible under the WOSB Program that participate in Federal procurement in industries where SBA determines that WOSB concerns are substantially underrepresented. In addition, the rule may negatively affect other small business concerns, as described below, to the extent that small business concerns not owned and controlled by women or non-eligible WOSB concerns may be excluded from competing for certain Federal contracting opportunities.

The 2002 Survey of Business Owners published by the U.S. Bureau of the Census reported 6,489,493 women-owned business concerns in the United States. More than 900,000 of these business concerns have one or more paid employees. Most women-owned business concerns, however, do not participate in the Federal contracting market.

In February 2006, SBA awarded a contract to the Kauffman-RAND Institute for Entrepreneurship Public Policy (RAND) to complete a study of the underrepresentation of WOSB concerns in Federal prime contracts by industry code. The resulting study, "the RAND Report," was published in April 2007 and is available to the public at *http://www.RAND.org/pubs/technical_reports/TR442.*

The Survey of Business Owners database used in the RAND Report represents all women-owned business (large and small) and only WOSB concerns are eligible under the regulations. As of January 21, 2007, approximately 93,000 business concerns represented themselves as WOSB concerns in the Federal Government's Central Contractor Registration (CCR) database as actual or potential Federal contractors. The study conducted by the RAND Corporation narrowed the pool of WOSB concerns in the CCR to approximately 56,000 to more closely approximate the universe of firms who are ready, willing, and able to do business with the Government. However, far fewer than 56,000 WOSB concerns are likely to be affected by this interim rule because only those eligible WOSB concerns competing for contracts in the eligible industries could possibly receive contracts under the program. Utilizing the Federal Procurement Data System data set for the total number of WOSB concerns (identified by Dun and Bradstreet DUNS number) that received obligated funds from awards, contracts, orders, and modifications to existing contracts for FY 2005, it was identified that approximately 12,000 WOSB concerns were recipients of Federal contracts in the 83 NAICS codes that would be eligible under the WOSB Program. Thus, this rule may affect approximately 12,000 WOSB concerns.

In addition, WOSB concerns that are not economically disadvantaged could be affected only to the extent that they compete for Federal contracts in industries in which WOSB concerns are determined to be substantially underrepresented. For industries in which WOSB concerns are determined to be substantially underrepresented, the potential number of WOSB concerns that could be direct beneficiaries of these procedures restricting certain Federal contracts to WOSB concerns is also likely to be much fewer than the number of WOSB concerns registered in CCR, since not all WOSB concerns will satisfy the eligibility requirements for EDWOSB status. The CCR currently lists only approximately 3,800 small disadvantaged business (SDB) concerns owned and controlled by one or more women. This is a useful statistic because the $750,000 net worth requirement is the same for SDB concerns and for EDWOSB concerns. While DoD, GSA, and NASA acknowledge that there may be other WOSB concerns in existence besides those listed in the CCR as being certified by SBA as SDB concerns, it is difficult to envision more than 6,000 WOSB concerns that could meet SBA's eligibility criteria and that are also ready, willing, and able to bid on Government contracts.

Moreover, the anticipated benefits of these procedures may be less attractive to many WOSB concerns than a number of other preferences designed to assist small business concerns, such as the HUBZone, 8(a), and other programs. Not all areas of Federal procurement have been designated as underrepresented or substantially underrepresented, and opportunities in some of the qualified industries may be limited. Consequently, many otherwise-qualified EDWOSB and WOSB concerns may not find it advantageous to pursue contract opportunities under these procedures.

DoD, GSA, and NASA determined that this rule will also negatively affect non-WOSB concerns (small business concerns not 51 percent owned and controlled by women) or women-owned small business concerns that are not eligible under the WOSB Program that are seeking Federal contracts for which competition has been restricted to participants in these procedures. This could affect the number of future contracts for those business concerns that derive a significant portion of their business from Federal contracting. To the extent that contracting officers use these procedures, non-WOSB concerns or non-eligible WOSB concerns may be excluded from competing for certain Federal contracting opportunities. However, this would occur only in industries in which WOSB concerns have been found to be underrepresented or substantially underrepresented, thus receiving fewer contracts than would be expected absent discrimination in the marketplace, and where the anticipated dollar value of the procurement does not exceed $4 million or $6.5 million, in the case of manufacturing contracts. In addition, we note that industries in which WOSB concerns are underrepresented are ones in which they have gotten less than their fair share of contracts and this suggests, at least implicitly, that non-WOSB concerns have therefore been getting more than the share they would receive in the absence of discrimination, and the ongoing effects of past discrimination. The number of small business concerns that would be excluded from eligibility for competing for contracts designated for the program under these procurements or from future such determinations is not known at this time.

Contracting opportunities identified by Federal agencies as candidates to be set aside for WOSB concerns will come from new contracting requirements and contracts currently performed by small and large business concerns. At this time, DoD, GSA, and NASA cannot accurately predict how the existing distribution of contracts by business type may change with this rule. However, DoD, GSA, and NASA do not expect a great many of the contracts awarded through the 8(a), HUBZone, or SDVOSB programs ($22.6 billion in FY 2006) to be re-competed as WOSB or EDWOSB set-aside contracts because those programs also support other statutory goals that agencies strive to achieve through their contracting activities. It is acknowledged, however, that some redistribution of contracts among the various programs may occur as a result of these procedures.

4. What are the projected reporting, recordkeeping, Paperwork Reduction Act and other compliance requirements?

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, DoD, GSA, and NASA determined that the rule imposes new reporting and recordkeeping requirements. The certification process described in 13 CFR subpart C, 127.300 to 127.302, is an information collection. The certification process requires a concern seeking to benefit from Federal contracting opportunities designated for WOSB or EDWOSB concerns to verify its status by providing documents to the WOSB Program Repository, submitting a certification to the WOSB Program Repository, and representing its status in an existing electronic contracting system (*i.e.,* ORCA). The WOSB or EDWOSB concern will have to represent in ORCA that it meets each eligibility requirement of the program.

Specifically, the WOSB or EDWOSB concern will be required to submit certain documents verifying eligibility at the time of certification in ORCA (and every year thereafter). These documents will be submitted to a document repository established by SBA. Further, the protest and eligibility examination procedures will require the submission of documents from those parties subject to a protest and eligibility examination. To reduce the burden on the WOSB or EDWOSB concerns, the same documents submitted at the time of certification will be used for the protests and eligibility examinations, except that for protests and eligibility examinations, SBA will also request copies of proposals submitted in response to a WOSB or EDWOSB solicitation and certain other documents and information to verify the status of an EDWOSB concern.

Finally, this rule also requires the WOSB concerns or EDWOSB concerns to retain copies of the documents submitted for a period of six years. DoD, GSA, and NASA believe that any additional burden imposed by this recordkeeping requirement would be minimal since the firms would maintain the information in their general course of business.

5. What relevant federal rules may duplicate, overlap, or conflict with this rule?

None.

6. What significant alternatives were considered that accomplish the stated objectives and minimize any significant economic impact on small entities?

DoD, GSA, and NASA minimized the significant economic impact on small entities. Pursuant to section 8(m) of the Small Business Act, a WOSB concern may be certified by a Federal agency, a State government, or a national certifying entity approved by the SBA; or a WOSB concern may self-certify to the contracting officer that it is a small business concern owned and controlled by women, along with adequate documentation in accordance with standards established by SBA. As discussed earlier, EDWOSB and WOSB concerns are allowed to self-certify their status in CCR and ORCA databases or provide evidence of certification from an approved third-party certifier. Therefore, although there may be some overlap, the addition of the set-aside mechanism for WOSB concerns should complement rather than conflict with the goals of existing set-aside programs.

An alternative approach would have been to require EDWOSB and WOSB concerns to apply for formal certification. This alternative approach was ruled out as unnecessary, not required by statute, and too costly. DoD, GSA, and NASA believe that eligibility examinations and protest procedures incorporated into this interim rule will minimize the likelihood of fraud and misrepresentation of WOSB and EDWOSB status. DoD, GSA, and NASA have decided that allowing self-certification and the option for firms to apply for certification from SBA-approved certifiers, when combined with random eligibility examinations and a formal protest procedure, is a more viable approach than formal certification and greatly reduces the burden on small entities.

In addition, DoD, GSA, and NASA estimate that implementation of this interim rule will require no additional proposal costs for WOSB concerns, as compared to submitting proposals under any other small business set-aside preferences. Moreover, WOSB concerns currently represent their status for purposes of data collection that is needed to implement 15 U.S.C. 644(g); therefore, the self-certification process of this interim rule imposes no additional requirement on WOSB concerns.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because this interim rule contains information collection requirements. A request for approval on a new information collection requirement was submitted by SBA and approved by the Office of Management and Budget (OMB Control Number 3245–0374). Based on the annual reporting burden estimates provided by SBA, it was determined that additional estimates would not produce different data. As a result, a request for approval on a new information collection requirement for FAR Case 2010–015 was not submitted to OMB. It was determined that the information collection requirement concerning FAR Case 2010–015 will be covered under SBA's OMB Control Number 3245–0374, Certification for the Women-Owned Small Business Federal Contract Program.

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 8(m) of the Small Business Reauthorization Act of 2000 (Pub. L. 106–554) (15 U.S.C. 637(m)), authorizes Federal contracting officers to restrict competition for Federal contracts in certain industries to EDWOSB concerns or WOSB concerns eligible under the WOSB Program. Further, SBA published a final rule implementing the Women-Owned Small Business Federal Contract Program on October 7, 2010 (75 FR 62258), which went into effect February 4, 2011. This rule must be immediately incorporated into the FAR to ensure Governmentwide application. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53

Government procurement.

Dated: March 24, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by—

■ a. Adding, in alphabetical order, the definition "economically disadvantaged women-owned small business (EDWOSB) concern";

■ b. Revising the definition "women-owned small business concern"; and

■ c. Adding, in alphabetical order, the definition "Women-Owned Small Business (WOSB) Program".

The added and revised text reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Economically disadvantaged women-owned small business (EDWOSB) concern—(see definition of *Women-Owned Small Business (WOSB) Program* in this section).

* * * * *

Women-owned small business concern means—

(1) A small business concern—

(i) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women; or

(2) A small business concern eligible under the Women-Owned Small Business Program in accordance with 13 CFR part 127 (see subpart 19.15).

Women-Owned Small Business (WOSB) Program. (1) *Women-Owned Small Business Program (WOSB Program*) means a program that authorizes contracting officers to limit competition to—

(i) Eligible economically disadvantaged women-owned small business concerns for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement; and

(ii) Eligible WOSB concerns eligible under the WOSB Program for Federal contracts assigned a NAICS code in an industry in which SBA has determined that WOSB concerns are substantially underrepresented.

(2) *Economically disadvantaged women-owned small business (EDWOSB) concern* means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

(3) *Women-owned small business (WOSB) concern eligible under the WOSB Program* (in accordance with 13 CFR part 127) means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.803 by revising paragraph (a)(6); and adding paragraph (a)(42) to read as follows:

4.803 Contents of contract files.

(a) * * *

(6) Set-aside decision including the type and extent of market research conducted.

* * * * *

(42) When limiting competition to women-owned small business (WOSB) concerns or economically disadvantaged women-owned small business (EDWOSB) concerns in accordance with subpart 19.15, include documentation—

(i) Of the type and extent of market research; and

(ii) That the NAICS code assigned to the acquisition is for an industry that SBA has designated as—

(A) Underrepresented for economically disadvantaged women-owned small business set-asides, or

(B) Substantially underrepresented for women-owned small business set-asides.

* * * * *

PART 6—COMPETITION REQUIREMENTS

6.207 [Redesignated 6.208]

■ 4. Redesignate section 6.207 as section 6.208, and add new section 6.207 to read as follows:

6.207 Set-asides for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.

(a) To fulfill the statutory requirements relating to 15 U.S.C. 637(m), contracting officers may set aside solicitations for only EDWOSB concerns or WOSB concerns eligible under the WOSB Program (see 19.1505).

(b) No separate justification or determination and findings is required under this part to set aside a contract action for EDWOSB concerns or WOSB concerns eligible under the WOSB Program.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Amend section 13.003 by revising paragraph (b)(2) to read as follows:

13.003 Policy.

* * * * *

(b) * * *

(2) The contracting officer may make an award to a small business under the 8(a) Program (see subpart 19.8), or set aside for HUBZone small business concerns (*see* 19.1305), service-disabled veteran-owned small business concerns (see 19.1405), or economically disadvantaged women-owned small business (EDWOSB) concerns and woman-owned small business (WOSB) concerns eligible under the WOSB Program (*see* 19.1505), an acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold and at or below the simplified acquisition threshold. The following contracting officer's decisions for acquisitions at or below the simplified acquisition threshold are not subject to review under subpart 19.4:

(i) A decision not to make an award under the 8(a) Program (*see* subpart 19.8).

(ii) A decision not to set aside an acquisition for HUBZone small business concerns, service-disabled veteran-owned small business concerns, or EDWOSB concerns and WOSB concerns eligible under the WOSB Program.

* * * * *

■ 6. Amend section 13.102 by removing from the introductory text of paragraph (a) "(*see* Subpart 4.11)" and adding "(*see* subpart 4.11)" in its place; and revising paragraph (a)(3) to read as follows:

13.102 Source List.

(a) * * *

(3) Women-owned small business concern, including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Woman-owned Small Business (WOSB) Program.

* * * * *

PART 14—SEALED BIDDING

■ 7. Amend section 14.502 by redesignating paragraph (b)(7) as (b)(8);

and adding a new paragraph (b)(7) to read as follows:

14.502 Conditions for use.

* * * * *

(b) * * *

(7) The use of a set-aside for economically disadvantaged woman-owned small business concerns and women-owned small business concerns eligible under the Woman-Owned Small Business Program (*see* subpart 19.15).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 8. Amend section 15.503 in paragraph (a)(2) by—

■ a. Removing from the end of paragraph (a)(2)(i)(C) the word "or";

■ b. Removing from the end of paragraph (a)(2)(i)(D) "19.1405." and adding "19.1405; or" in its place;

■ c. Adding paragraph (a)(2)(i)(E); and

■ d. Revising paragraph (a)(2)(ii)(C).

The added and revised text reads as follows:

15.503 Notifications to unsuccessful offerors.

(a) * * *

(2) * * *

(i) * * *

(E) When using the Woman-Owned Small Business Program procedures in 19.1505.

(ii) * * *

(C) That no response is required unless a basis exists to challenge the size status or small business status of the apparently successful offeror (*e.g.,* small business concern, small disadvantaged business concern, HUBZone small business concern, service-disabled veteran-owned small business concern, economically disadvantaged women-owned small business concern, or women-owned small business concern eligible under the Women-Owned Small Business Program).

* * * * *

PART 18—EMERGENCY ACQUISITIONS

18.117 through 18.126 [Redesignated as 18.118 through 18.127]

■ 9. Redesignate sections 18.117 through 18.126 as sections 18.118 through 18.127, respectively; and add a new section 18.117 to read as follows:

18.117 Awards to economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program.

Contracts may be awarded to EDWOSB concerns and WOSB concerns on a competitive basis. (*See* subpart 19.15.)

18.203 [Amended]

■ 10. Amend section 18.203 by removing from paragraph (a) "(*See* 6.207" and adding "(*See* 6.208" in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 11. Amend section 19.000 by revising paragraph (a)(3) to read as follows:

19.000 Scope of part

(a) * * *

(3) Setting acquisitions aside for exclusive competitive participation by small business, 8(a) business development participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program;

* * * * *

■ 12. Amend section 19.201 by revising paragraph (d)(10) to read as follows:

19.201 General policy.

* * * * *

(d) * * *

(10) Make recommendations in accordance with agency procedures as to whether a particular acquisition should be awarded under subpart 19.5 as a small business set-aside, under subpart 19.8 as a Section 8(a) award, under subpart 19.13 as a HUBZone set-aside, under subpart 19.14 as a service-disabled veteran-owned small business set-aside, or under subpart 19.15 as an economically disadvantaged women-owned small business (EDWOSB) or women-owned small business (WOSB) set-aside.

* * * * *

19.202 [Amended]

■ 13. Amend section 19.202 by removing "19.13 or 19.14" and adding "19.13, 19.14, or 19.15" in its place.

■ 14. Amend section 19.202–5 by revising paragraph (a) to read as follows:

19.202–5 Data collection and reporting requirements.

* * * * *

(a) Require each prospective contractor to represent whether it is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, women-owned small business, EDWOSB concern, or WOSB concern eligible under the WOSB Program (see the provision at 52.219–1, Small Business Program Representations).

* * * * *

■ 15. Amend section 19.202–6 by—

■ a. Removing from the end of paragraph (a)(4) the word "and";

■ b. Removing from paragraph (a)(5) "(*see* Subpart 19.14)." and adding "(*see* subpart 19.14); and" in its place; and

■ c. Adding paragraph (a)(6) to read as follows:

19.202–6 Determination of fair market price.

(a) * * *

(6) Set-asides for EDWOSB concerns and WOSB concerns eligible under the WOSB Program (see subpart 19.15).

* * * * *

■ 16. Amend section 19.203 by—

■ a. Revising paragraph (a);

■ b. Removing from paragraph (b) "or SDVOSB Program" and adding "SDVOSB Program, or WOSB Program" in its place;

■ c. Removing from paragraph (c) "or SDVOSB programs" and adding "SDVOSB, or WOSB programs" in its place.

19.203 Relationship among small business programs.

(a) There is no order of precedence among the 8(a) Program (subpart 19.8), HUBZone Program (subpart 19.13), Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart 19.14), or the Women-Owned Small Business (WOSB) Program (subpart 19.15).

* * * * *

■ 17. Amend section 19.301–1 by revising the third sentence of paragraph (d) to read as follows:

19.301–1 Representation by the offeror.

* * * * *

(d) * * * The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 121.108 for small business, 13 CFR 124.501 for 8(a) small business, 13 CFR 124.1004 for small disadvantaged business, 13 CFR 125.29 for veteran or service-disabled veteran-owned small business, 13 CFR 126.900 for HUBZone small business, and 13 CFR 127.700 for economically disadvantaged women-owned small business concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program.

19.308 [Redesignated as 19.309]

■ 18. Redesignate section 19.308 as section 19.309; and add a new section 19.308 to read as follows:

19.308 Protesting a firm's status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program.

(a) An offeror, the contracting officer, or the SBA may protest the apparent successful offeror's status as an EDWOSB concern or WOSB concern eligible under the WOSB Program.

(b) Protests relating to small business size status are subject to the procedures of subpart 19.3. An interested party (*see* 19.308(a)) seeking to protest both the size and status of an apparent successful offeror shall file two separate protests.

(c) All protests shall be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more women who are United States citizens; or

(ii) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women, when it is in connection with an EDWOSB contract.

(2) SBA shall consider protests by a contracting officer when the apparent successful offeror has failed to provide all of the required documents, as set forth in FAR 19.1503(c).

(d) Protest by an offeror.

(1) An offeror shall submit its protest to the contracting officer—

(i) To be received by the close of business by the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by the close of business by the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the designated time limit is untimely, unless it is from the contracting officer or SBA.

(e)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or by fax to (202) 205–6390, Attn: Women-owned Small Business Status Protest. SBA's protest regulations are found in subpart F "Protests" at 13 CFR 127.600 through 127.605.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing of the protest:

(i) The solicitation number; the name, address, telephone number and facsimile number of the contracting officer, the successful offeror and the protester.

(ii) Whether the protestor submitted an offer.

(iii) Whether the protested concern was the apparent successful offeror.

(iv) When the protested concern submitted its offer.

(v) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(vi) The bid opening date, if applicable.

(vii) The date the contracting officer received the protest.

(viii) The date the protestor received notification about the apparent successful offeror, if applicable; and

(ix) Whether a contract has been awarded.

(f) SBA will notify the protester and the contracting officer of the date the protest was received.

(g) *Before SBA decision.* The contracting officer may award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to prevent significant harm to the public interest.

(1) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of that time that the contracting officer may grant SBA.

(2) If SBA does not issue its determination within 15 business days, the contracting officer shall contact SBA to obtain the status of its decision.

(3) After contacting SBA, if the contracting officer determines in writing that there is an immediate need and it is in the public's interest to proceed with award, the contracting officer may award the contract. This determination shall be provided to the SBA Director for Government Contracting and a copy shall be included in the contract file.

(h) *After SBA decision.* SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and no OHA appeal has been filed, then—

(i) The concern must remove its designation in the Central Contractor Registration (CCR) and Online Representations and Certifications Application (ORCA) as an EDWOSB or WOSB concern, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(ii) The contracting officer shall not award the contract to the protested concern.

(iii) The contracting officer shall terminate the award, shall not exercise any options or award further task or delivery orders, if the contracting officer receives the determination after contract award.

(iv) The contracting officer may allow contract performance to continue when a written determination is made in accordance with 19.308(g) and (h), but shall not exercise any options or award further task or delivery orders.

(v) The contracting officer shall update the FPDS to reflect the final SBA decision.

(3) If SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and a timely OHA appeal has been filed, then—

(i) The contracting officer must consider whether performance can be suspended until an OHA decision is rendered.

(ii) The contracting officer shall either terminate the contract, not exercise the next option, or not award further task or delivery orders, if OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible. The contracting officer may allow contract performance to continue when a written determination is made in accordance with 19.308(g) and (h), but shall not exercise any options or award further task or delivery orders; and

(iii) The contracting officer shall update the FPDS to reflect OHA's decision.

(iv) The concern must remove its designation in CCR and ORCA as an EDWOSB or WOSB concern, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

■ 19. Amend section 19.402 by revising paragraphs (c)(1)(i) and (ii) to read as follows:

19.402 Small Business Administration procurement center representatives.

* * * * *

(c) * * *

(1) * * *

(i) The setting aside of selected acquisitions not unilaterally set aside by the contracting officer;

(ii) New qualified small business sources, including veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, economically disadvantaged women-owned small, and women-owned small eligible under the Woman-Owned Small Business Program; and

* * * * *

■ 20. Amend section 19.501 by revising the second sentence in paragraph (c) to read as follows:

19.501 General.

* * * * *

(c) * * * The contracting officer shall perform market research and document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless an award is anticipated to a small business under the 8(a), HUBZone, service-disabled veteran-owned, or WOSB programs. * * *

* * * * *

■ 21. Amend section 19.804–2 by revising paragraph (a)(9) to read as follows:

19.804–2 Agency offering.

(a) * * *

(9) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business, HUBZone, service-disabled veteran-owned small business set-aside, or a set-aside under the Women-Owned Small Business (WOSB) Program, and that no other public communication (such as a notice through the Governmentwide point of entry (GPE)) has been made showing the contracting agency's clear intention to set-aside the acquisition for small business, HUBZone small business, service-disabled veteran-owned small business concerns, or a set-aside under the WOSB Program.

* * * * *

■ 22. Amend section 19.1202–2 by revising paragraph (b)(1) to read as follows:

19.1202–2 Applicability.

* * * * *

(b) * * *

(1) Small business set-asides (see subpart 19.5), HUBZone set-asides (see subpart 19.13), service-disabled veteran-owned small business set-asides (see subpart 19.14), economically disadvantaged women-owned small business set-asides, and set-asides for women-owned small business concerns eligible under the Women-Owned Small Business Program (*see* subpart 19.15).

* * * * *

■ 23. Add subpart 19.15 to read as follows:

Subpart 19.15—Women-Owned Small Business (WOSB) Program

Sec.

19.1500 General.
19.1501 Definition.
19.1502 Applicability.
19.1503 Status.
19.1504 Exclusions
19.1505 Set-aside procedures.
19.1506 Contract clauses.

Subpart 19.15—Women-Owned Small Business (WOSB) Program

19.1500 General.

(a) Section 8(m) of the Small Business Act (15 U.S.C. 637(m)) created the Women-Owned Small Business (WOSB) Program.

(b) The purpose of the WOSB Program is to ensure women-owned small business concerns have an equal opportunity to participate in Federal contracting and to assist agencies in achieving their WOSB participation goals (see 13 CFR part 127).

19.1501 Definition.

WOSB Program Repository means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

19.1502 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

19.1503 Status.

(a) Status as an economically disadvantaged women-owned small business (EDWOSB) or WOSB concern is determined in accordance with 13 CFR part 127.

(b) The contracting officer shall verify that the offeror—

(1) Is registered in Central Contractor Registration (CCR);

(2) Is self-certified in the Online Representation and Certifications Application (ORCA); and

(3) Has submitted documents verifying its eligibility at the time of initial offer to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(c)(1) An EDWOSB or WOSB concern that has been certified by an SBA approved third party certifier, (which includes SBA certification under the 8(a) Program), must provide the following eligibility requirement documents—

(i) The third-party certification;

(ii) SBA's WOSB Program Certification form (SBA Form 2413); and

(iii) The joint venture agreement, if applicable.

(2) An EDWOSB or WOSB concern that has not been certified by an SBA approved third party certifier or by SBA under the 8(a) Program, must provide the following documents:

(i) The U.S. birth certificate, naturalization documentation, or unexpired U.S. passport for each woman owner.

(ii) The joint venture agreement, if applicable.

(iii) For limited liability companies, Articles of organization (also referred to as certificate of organization or articles of formation) and any amendments, and the operating agreement and any amendments.

(iv) For corporations, articles of incorporation and any amendments, by-laws and any amendments, all issued stock certificates, including the front and back copies, signed in accord with the by-laws, stock ledger, and voting agreements, if any.

(v) For partnerships, the partnership agreement and any amendments.

(vi) For sole proprietorships, corporations, limited liability companies and partnerships if applicable, the assumed/fictitious name certificate(s).

(vii) SBA's WOSB Program Certification form (SBA Form 2413).

(viii) For EDWOSB concerns, in addition to the above, the SBA Form 413, Personal Financial Statement, available to the public at *http://www.sba.gov/tools/Forms/index.html,* for each woman claiming economic disadvantage.

(d)(1) A contracting officer may accept a concern's self-certification as accurate for a specific procurement reserved for award under this subpart if—

(i) The apparent successful WOSB or EDWOSB offeror provided the required documents;

(ii) There has been no protest or other credible information that calls into question the concern's eligibility as an EDWOSB or WOSB concern; and

(iii) There has been no decision issued by SBA as a result of a current eligibility examination finding the concern did not qualify as an EDWOSB or WOSB concern at the time it submitted its initial offer for an EDWOSB or WOSB requirement.

(2) The contracting officer shall file a status protest in accordance with FAR 19.308 if—

(i) There is information that questions the eligibility of a concern; or

(ii) The concern fails to provide all of the required documents to verify its eligibility.

(e) If there is a decision issued by SBA as a result of a current eligibility examination finding the concern did not qualify as an EDWOSB or WOSB concern, the contracting officer may terminate the contract, and shall not exercise any option nor award further task or delivery orders. The contracting officer shall not count or include the award toward the small business accomplishments for an EDWOSB or WOSB concern and must update FPDS from the date of award.

(f) A joint venture may be considered an EDWOSB concern or WOSB concern if it meets the requirements of 13 CFR 127.506.

(g) An EDWOSB or WOSB concern that is a non-manufacturer, as defined in 13 CFR 121.406(b), may submit an offer on an EDWOSB or WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in that regulation.

19.1504 Exclusions.

This subpart does not apply to—

(a) Requirements that an 8(a) concern is currently performing under the 8(a) Program or that SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;

(b) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (see subpart 8.6); or

(2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see subpart 8.7);

(c) Orders against indefinite delivery contracts (see subpart 16.5); or

(d) Orders against Federal Supply Schedules (see subpart 8.4).

19.1505 Set-aside procedures.

(a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB or WOSB concerns eligible under the WOSB Program in those NAICS codes in which SBA has determined that women-owned small business concerns are underrepresented or substantially underrepresented in Federal procurement, as specified on SBA's Web site at *http://www.sba.gov/WOSB.*

(b) For requirements in NAICS codes designated by SBA as underrepresented, a contracting officer may restrict competition to EDWOSB concerns if the contracting officer has a reasonable expectation based on market research that—

(1) Two or more EDWOSB concerns will submit offers for the contract;

(2) The anticipated award price of the contract (including options) does not exceed $6.5 million, in the case of a contract assigned an NAICS code for manufacturing; or $4 million, for all other contracts; and

(3) Contract award will be made at a fair and reasonable price.

(c) A contracting officer may restrict competition to WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), for requirements in NAICS codes designated by SBA as substantially underrepresented if there is a reasonable expectation based on market research that—

(1) Two or more WOSB concerns (including EDWOSB concerns), will submit offers;

(2) The anticipated award price of the contract (including options) will not exceed $6.5 million, in the case of a contract assigned an NAICS code for manufacturing, or $4 million for all other contracts; and

(3) Contract award may be made at a fair and reasonable price.

(d) The contracting officer may make an award, if only one acceptable offer is received from a qualified EDWOSB or WOSB concern.

(e) The contracting officer must check whether the apparently successful offeror filed all the required eligibility documents, and file a status protest if any documents are missing. *See* 19.1503(d)(2).

(f) If no acceptable offers are received from an EDWOSB or WOSB concern, the set-aside shall be withdrawn and the requirement, if still valid, must be considered for set aside in accordance with 19.203 and subpart 19.5.

(g) If the contracting officer rejects a recommendation by SBA's Procurement Center Representative—

(1) The contracting officer shall notify the procurement center representative as soon as practicable;

(2) SBA shall notify the contracting officer of its intent to appeal the contracting officer's decision no later than five business days after receiving notice of the contracting officer's decision;

(3) The contracting officer shall suspend further action regarding the procurement until the head of the agency issues a written decision on the appeal, that there are urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract;

(4) Within 15 business days of SBA's notification to the head of the contracting activity, SBA shall file a formal appeal to the head of the agency, or the appeal will be determined withdrawn; and

(5) The head of the agency, or designee, shall specify in writing the reasons for a denial of an appeal brought under this section.

19.1506 Contract clauses.

(a) The contracting officer shall insert the clause 52.219–29, Notice of Total Set-Aside for Economically Disadvantaged Women-owned Small Business (EDWOSB) Concerns, in solicitations and contracts for acquisitions that are set aside for economically disadvantaged women-owned small business concerns under 19.1505(b).

(b) The contracting officer shall insert the clause 52.219–30, Notice of Total Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the Women-Owned Small Business Program, in solicitations and contracts for acquisitions that are set aside for women-owned small business concerns under 19.1505(c).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.202–1 [Amended]

■ 24. Amend section 26.202–1 introductory text by removing "(*see* 6.207)" and adding "(*see* 6.208)" in its place.

PART 33—PROTEST, DISPUTES, AND APPEALS

■ 25. Amend section 33.102 by revising the last sentence of paragraph (a) to read as follows:

33.102 General.

(a) * * * (*See* 19.302 for protests of small business status, 19.305 for protests of disadvantaged business status, 19.306 for protests of HUBZone small business status, and 19.307 for protests of service-disabled veteran-owned small business status, and 19.308 for protests of the status of an economically disadvantaged women-owned small business concern or of a women-owned small business concern eligible under the Women-Owned Small Business Program.)

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.501 [Amended]

■ 26. Amend section 36.501 by removing from the first sentence of paragraph (b) "or 19.14" and adding "19.14, or 19.15" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 27. Amend section 42.501 by revising paragraph (b) to read as follows:

42.501 General.

* * * * *

(b) Postaward orientation is encouraged to assist (see part 19)—

(1) Small business concerns;

(2) Small disadvantaged business concerns;

(3) Veteran-owned small business concerns;

(4) Service-disabled veteran-owned small business concerns;

(5) HUBZone small business concerns; and

(6) Women-owned small business concerns (including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 28. Amend section 52.212–3 by—

■ a. Revising the date of the clause;

■ b. Adding in paragraph (a), in alphabetical order, the definitions "economically disadvantaged women-owned small business (EDWOSB) concern" and "women-owned small business (WOSB) concern eligible under the WOSB Program";

■ c. Redesignating paragraphs (c)(6), (c)(7), (c)(8), and (c)(9) as paragraphs (c)(8), (c)(9), (c)(10), and (c)(11), respectively;

■ d. Adding new paragraphs (c)(6) and (c)(7);

■ e. Removing from the "Note" "(c)(6) and (c)(7)" and adding "(c)(8) and (9)" in its place and revising its heading to read "Note to paragraphs (c)(8) and (9)";

■ f. Removing from the newly redesignated paragraph (c)(10)(i)(A) "in the database" and adding "in the CCR Dynamic Small Business Search database" in its place; and removing the words "(PRO–Net)";

■ g. Removing from the newly redesignated paragraph (c)(10)(ii) "in paragraph (c)(8)(i)" and adding "in paragraph (c)(10)(i)" in its place;

■ h. Removing from the newly redesignated paragraph (c)(11)(ii) "in paragraph (c)(9)(i)" and adding "in paragraph (c)(11)(i)" in its place;

■ i. Revising the date of Alternate I and the introductory text; redesignating paragraph (10) as paragraph (12); and removing from the newly redesignated paragraph (12) "or (c)(8)" and adding "or (c)(10)" in its place; and

■ j. Revising the date of Alternate II and the introductory text.

The added and revised text to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (APR 2011)

(a) * * *

Economically disadvantaged women-owned small business (EDWOSB) concern means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

* * * * *

Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

* * * * *

(c) * * *

(6) WOSB concern eligible under the WOSB Program. [*Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.*] The offeror represents that—

(i) It * is, * is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It * is, * is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate in reference to the WOSB concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the WOSB concern or concerns that are participating in the joint venture:* .] Each WOSB concern participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [*Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.*] The offeror represents that—

(i) It * is, * is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It * is, * is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(ii) of this provision is accurate in reference to the EDWOSB concern or concerns that are participating in the joint venture. The offeror shall enter the name or names of the EDWOSB concern or concerns that are participating in the joint venture: _____. Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

* * * * *

Alternate I (APR 2011). As prescribed in 12.301(b)(2), add the following paragraph (c)(12) to the basic provision:

* * * * *

Alternate II (APR 2011). As prescribed in 12.301(b)(2), add the following paragraph (c)(10)(iii) to the basic provision:

* * * * *

■ 29. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (b)(21) through (b)(46) as paragraphs (b)(23) through (b)(48); and

■ c. Adding new paragraphs (b)(21) and (b)(22)

The revised and added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (APR 2011)

* * * * *

(b) * * *

____ (21) 52.219–29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (APR 2011).

____ (22) 52.219–30 Notice of Total Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (APR 2011).

* * * * *

■ 30. Amend section 52.219–1 by—

■ a. Removing from the introductory paragraph "19.308(a)(1)" and adding "19.309(a)(1)" in its place;

■ b. Revising the date of the provision;

■ c. Redesignating paragraphs (b)(4) through (b)(6) as paragraphs (b)(6) through (b)(8);

■ d. Adding new paragraphs (b)(4) and (b)(5);

■ e. Removing from newly redesignated (b)(7) "in paragraph (b)(4)" and adding "in paragraph (b)(6)" in its place;

■ f. Removing from newly redesignated (b)(8) "in paragraph (b)(6)" and adding "in paragraph (b)(8)" in its place;
■ g. Adding in paragraph (c), in alphabetical order, the definitions "economically disadvantaged women-owned small business (EDWOSB) concern" and "women-owned small business (WOSB) concern eligible under the WOSB Program";
■ h. Revising paragraph (d)(2);
■ i. Revising the date of Alternate I, and removing from the introductory paragraph "the following paragraph (b)(7)" and adding "the following paragraph (b)(9)" in its place; and
■ j. Redesignating Alternate I paragraph (7) as paragraph (9).

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (APR 2011)

* * * * *

(b) * * *

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. [*Complete only if the offeror represented itself as a women-owned small business concern in paragraph (b)(3) of this provision.*] The offeror represents as part of its offer that—

(i) It * is, * is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It * is, * is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(4)(i) of this provision is accurate in reference to the WOSB concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the WOSB concern or concerns that are participating in the joint venture: ____.*] *Each WOSB concern participating in the joint venture shall submit a separate signed copy of the WOSB representation.*

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [*Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (b)(4) of this provision.*] The offeror represents as part of its offer that—

(i) It * is, * is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It * is, * is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(5)(i) of this provision is accurate in reference to the EDWOSB concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the EDWOSB concern or concerns that are participating in the joint venture: _____.*] *Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.*

* * * * *

(c) * * *

Economically disadvantaged women-owned small business (EDWOSB) concern means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

* * * * *

Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

* * * * *

(d) * * *

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

* * * * *

Alternate I (APR 2011). * * *

* * * * *

52.219–2 [Amended]

■ 31. Amend section 52.219–2 by removing from the introductory paragraph "19.308(c)" and adding "19.309(c)" in its place.

52.219–22 [Amended]

■ 32. Amend section 52.219–22 by—
■ a. Removing from the introductory paragraph "19.308(b)" and adding "19.309(b)" in its place; and
■ b. Removing from Alternate I "(Oct 1998)" and adding "(APR 2011)"; and removing text "19.307(b)" and adding "19.309(b)" in its place.

52.219–28 [Amended]

■ 33. Amend section 52.219–28 by removing from the introductory paragraph "19.308(d)" and adding "19.309(d)" in its place;

■ 34. Add sections 52.219–29 and 52.219–30 to read as follows:

52.219–29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns.

As prescribed in 19.1506, insert the following clause:

Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (APR 2011)

(a) *Definitions. Economically disadvantaged women-owned small business (EDWOSB) concern* means—

A small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.

WOSB Program Repository means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *General.* (1) Offers are solicited only from EDWOSB concerns. Offers received from concerns that are not EDWOSB concerns will not be considered.

(2) Any award resulting from this solicitation will be made to an EDWOSB concern.

(3) The contracting officer will ensure that the EDWOSB concern has provided all required documents to the WOSB Program Repository. The contract will not be awarded until all required documents are received.

(c) *Agreement.* An EDWOSB concern agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

(d) *Joint Venture.* A joint venture may be considered an EDWOSB concern if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The EDWOSB participant of the joint venture is designated in the Central Contractor Registration (CCR) database and

the Online Representations and Certifications Application (ORCA) as an EDWOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating an EDWOSB concern as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the EDWOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the EDWOSB contract performed by the joint venture.

(4) The joint venture performs the applicable percentage of work required in accordance with paragraph (c) above; and

(5) The procuring activity executes the contract in the name of the EDWOSB or joint venture.

(e) *Nonmanufacturer.* An EDWOSB that is a non-manufacturer, as defined in 13 CFR 121.406(b) or FAR 19.102(f), may submit an offer on an EDWOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)

52.219–30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

As prescribed in 19.1506, insert the following clause:

Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (APR 2011)

(a) *Definitions. Women-owned small business (WOSB) concern eligible under the WOSB Program* (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

WOSB Program Repository means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *General.* (1) Offers are solicited only from WOSBs. Offers received from concerns that are not WOSBs shall not be considered.

(2) Any award resulting from this solicitation will be made to a WOSB.

(3) The contracting officer will ensure that the WOSB has provided the required documents to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(c) *Agreement.* A WOSB agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including cost of materials).

(d) *Joint Venture.* A joint venture may be considered a WOSB if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The WOSB participant of the joint venture is designated in the Central Contractor Registration (CCR) database and the Online Representations and Certifications Application (ORCA) as a WOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating a WOSB as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the WOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the WOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the WOSB contract performed by the joint venture.

(4) The joint venture must perform the applicable percentage of work required in accordance with paragraph (c) above; and

(5) The procuring activity executes the contract in the name of the WOSB or joint venture.

(e) *Nonmanufacturer.* A WOSB that is a non-manufacturer, as defined in 13 CFR 121.406(b) or FAR 19.102(f), may submit an offer on a WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)

PART 53—FORMS

■ 35. Revise section 53.301–1447 to read as follows:

53.301–1447 Solicitation/Contract.

BILLING CODE 6820–EP–P

SOLICITATION/CONTRACT
BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) | RATING | PAGE OF

2. CONTRACT NO. | 3. AWARD/EFFECTIVE DATE | 4. SOLICITATION NUMBER | 5. SOLICITATION TYPE ☐ SEALED BIDS (IFB) ☐ NEGOTIATED (RFP) | 6. SOLICITATION ISSUE DATE

7. ISSUED BY CODE

NO COLLECT CALLS

8. THIS ACQUISITION IS ☐ UNRESTRICTED OR ☐ SET ASIDE: % FOR:
☐ SMALL BUSINESS ☐ WOMEN-OWNED SMALL BUSINESS (WOSB)
☐ HUBZONE SMALL BUSINESS ☐ ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB)
☐ SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS NAICS:
☐ 8(A) SIZE STANDARD:

9. (AGENCY USE)

10. ITEMS TO BE PURCHASED *(BRIEF DESCRIPTION)*
☐ SUPPLIES ☐ SERVICES

11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLOCK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.

12. ADMINISTERED BY CODE

13. CONTRACTOR OFFEROR CODE FACILITY CODE

TELEPHONE NUMBER _____ DUNS NUMBER _____

☐ CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

14. PAYMENT WILL BE MADE BY CODE

SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK:

15. PROMPT PAYMENT DISCOUNT

16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION ☐ 10 U.S.C. 2304 ( ) ☐ 41 U.S.C. 253 ( )

17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. TOTAL AWARD AMOUNT *(FOR GOVERNMENT USE ONLY)*

25. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ☐ ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

26. AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION ☐ NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

27. SIGNATURE OF OFFEROR/CONTRACTOR

28. UNITED STATES OF AMERICA *(SIGNATURE OF CONTRACTING OFFICER)*

NAME AND TITLE OF SIGNER *(TYPE OR PRINT)* | DATE SIGNED | NAME OF CONTRACTING OFFICER | DATE SIGNED

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION NOT USABLE

STANDARD FORM 1447 (REV. 3/2011)
Prescribed by GSA - FAR (48 CFR) 53.214(d)

NO RESPONSE FOR REASONS CHECKED			
	CANNOT COMPLY WITH SPECIFICATIONS		CANNOT MEET DELIVERY REQUIREMENT
	UNABLE TO IDENTIFY THE ITEM(S)		DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
	OTHER *(Specify)*		
	WE DO		WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEMS INVOLVED

NAME AND ADDRESS OF FIRM *(Include Zip Code)*	SIGNATURE
	TYPE OR PRINT NAME AND TITLE OF SIGNER

FROM:

AFFIX
STAMP
HERE

TO:

SOLICITATION NO. _____

DATE AND LOCAL TIME _____

STANDARD FORM 1447 (REV. 3/2011) **BACK**

■ 36. Revise section 53.301–1449 to read as follows:

53.301–1449 Solicitation/Contract/Order for Commercial Items.

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER | PAGE 1 OF

2. CONTRACT NO. | 3. AWARD/EFFECTIVE DATE | 4. ORDER NUMBER | 5. SOLICITATION NUMBER | 6. SOLICITATION ISSUE DATE

7. FOR SOLICITATION INFORMATION CALL: | a. NAME | b. TELEPHONE NUMBER *(No collect calls)* | 8. OFFER DUE DATE/ LOCAL TIME

9. ISSUED BY CODE

10. THIS ACQUISITION IS ☐ UNRESTRICTED OR ☐ SET ASIDE: % FOR:
☐ SMALL BUSINESS ☐ WOMEN-OWNED SMALL BUSINESS (WOSB)
☐ HUBZONE SMALL BUSINESS ☐ ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB) UNDER THE WOMEN OWNED SMALL BUSINESS ROGRAM
☐ SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS ☐ 8 (A)
NAICS:
SIZE STANDARD:

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED ☐ SEE SCHEDULE

12. DISCOUNT TERMS

☐ 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

13b. RATING

14. METHOD OF SOLICITATION ☐ RFQ ☐ IFB ☐ RFP

15. DELIVER TO CODE

16. ADMINISTERED BY CODE

17a. CONTRACTOR/ OFFEROR CODE FACILITY CODE

TELEPHONE NO.

18a. PAYMENT WILL BE MADE BY CODE

☐ 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED ☐ SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	(Use Reverse and/or Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA

26. TOTAL AWARD AMOUNT *(For Govt. Use Only)*

☐ 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED

☐ 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED

☐ 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED

☐ 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR

31a. UNITED STATES OF AMERICA *(SIGNATURE OF CONTRACTING OFFICER)*

30b. NAME AND TITLE OF SIGNER *(Type or print)* | 30c. DATE SIGNED | 31b. NAME OF CONTRACTING OFFICER *(Type or print)* | 31c. DATE SIGNED

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PREVIOUS EDITION IS NOT USABLE

STANDARD FORM 1449 (REV. 1/2011)
Prescribed by GSA - FAR (48 CFR) 53.212

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELPHONE NUMBER OF AUTHORZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT	37. CHECK NUMBER
☐ PARTIAL ☐ FINAL			☐ COMPLETE ☐ PARTIAL ☐ FINAL	
38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY		

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY *(Print)*	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT *(Location)*	
		42c. DATE REC'D *(YY/MM/DD)*	42d. TOTAL CONTAINERS

STANDARD FORM 1449 (REV. 1/2011) **BACK**

■ 37. Revise section 53.302–347 to read as follows:

53.302–347 Order for Supplies or Services.

ORDER FOR SUPPLIES OR SERVICES

PAGE OF PAGES

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER
2. CONTRACT NO. *(If any)*
3. ORDER NO.
4. REQUISITION/REFERENCE NO.
5. ISSUING OFFICE *(Address correspondence to)*

6. SHIP TO:
a. NAME OF CONSIGNEE
b. STREET ADDRESS
c. CITY
d. STATE
e. ZIP CODE
f. SHIP VIA

7. TO:
a. NAME OF CONTRACTOR
b. COMPANY NAME
c. STREET ADDRESS
d. CITY
e. STATE
f. ZIP CODE

8. TYPE OF ORDER

☐ a. PURCHASE
REFERENCE YOUR: _____
Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.

☐ b. DELIVERY -- Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION DATA

10. REQUISITIONING OFFICE

11. BUSINESS CLASSIFICATION *(Check appropriate box(es))*
☐ a. SMALL ☐ b. OTHER THAN SMALL ☐ c. DISADVANTAGED ☐ d. WOMEN-OWNED ☐ e. HUBZone
☐ f. SERVICE-DISABLED VETERAN-OWNED ☐ g. WOMEN-OWNED SMALL BUSINESS (WOSB) ☐ h. ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB) UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM

12. F.O.B. POINT

13. PLACE OF
a. INSPECTION
b. ACCEPTANCE

14. GOVERNMENT B/L NO.

15. DELIVER TO F.O.B. POINT ON OR BEFORE *(Date)*

16. DISCOUNT TERMS

17. SCHEDULE *(See reverse for Rejections)*

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)

SEE BILLING INSTRUCTIONS ON REVERSE

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.

21. MAIL INVOICE TO:
a. NAME
b. STREET ADDRESS *(or P.O. Box)*
c. CITY
d. STATE
e. ZIP CODE

17(h) TOT. *(Cont. pages)*

$ 17(i) GRAND TOTAL

22. UNITED STATES OF AMERICA BY *(Signature)*

23. NAME *(Typed)*
TITLE: CONTRACTING/ORDERING OFFICER

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION NOT USABLE

OPTIONAL FORM 347 (REV. 1/2011)
Prescribed by GSA/FAR 48 CFR 53.213(f)

SUPPLEMENTAL INVOICING INFORMATION

If desired, this order (or a copy thereof) may be used by the Contractor as the Contractor's invoice, instead of a separate invoice, provided the following statement, (signed and dated) is on (or attached to) the order: "Payment is requested in the amount of $ _____ . No other invoice will be submitted." However, if the Contractor wishes to submit an invoice, the following information must be provided: contract number (if any), order number, item number(s), description of supplies or service, sizes, quantities, unit prices, and extended totals. Prepaid shipping costs will be indicated as a separate item on the invoice. Where shipping costs exceed $10 (except for parcel post), the billing must be supported by a bill of lading or receipt. When several orders are invoiced to an ordering activity during the same billing period, consolidated periodic billings are encouraged.

RECEIVING REPORT

Quantity in the "Quantity Accepted" column on the face of this order has been: ☐ inspected, ☐ accepted, ☐ received by me and conforms to contract. Items listed below have been rejected for the reasons indicated.

SHIPMENT NUMBER	PARTIAL		DATE RECEIVED	SIGNATURE OF AUTHORIZED U.S. GOV'T REP.	DATE
	FINAL				
TOTAL CONTAINERS		GROSS WEIGHT	RECEIVED AT	TITLE	

REPORT OF REJECTIONS

ITEM NO.	SUPPLIES OR SERVICES	UNIT	QUANTITY REJECTED	REASON FOR REJECTION

OPTIONAL FORM 347 (REV. 1/2011) BACK

[FR Doc. 2011–7368 Filed 3–31–11; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAC 2005–51; FAR Case 2009–029; Item II; Docket 2010–0096, Sequence 1]

RIN 9000–AL72

Federal Acquisition Regulation; Clarification of Standard Form 26—Award/Contract

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to include clarifications to Standard Form (SF) 26, Award/Contract. This revised form includes changes above blocks 17 and 18 and in block 18 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed bid contract.

DATES: *Effective Date:* May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–51, FAR Case 2009–029.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 54560 on September 8, 2010, to clarify the use of blocks 17 and 18 of the Standard Form (SF) 26, Award/Contract.

FAR 53.214(a) prescribes the SF 26 for use in contracting for supplies and services by sealed bidding (except for construction and architect-engineer services). The SF 26 is used to award sealed bid contracts after obtaining bids using a SF 33, Solicitation, Offer, and Award. FAR 14.408–1(d)(1) specifies that, if an offer made using a SF 33 leads to further changes, the resulting contract must be prepared as a bilateral document using the SF 26. Agencies identified instances in which contracting officers mistakenly checked block 18 when awarding negotiated, not sealed bid contracts, which created the potential for disputes between the agency and contractors. The clarifications provided on the form for when to use blocks 17 and 18 should eliminate this issue.

The changes will not prevent contracting officers from using block 17 of the SF 26 to award negotiated procurements; it will clarify to contracting officers the proper use of block 17 and block 18 and prohibit the use of block 18 of the SF 26 when awarding negotiated procurements. This final rule clarifies the use of block 18 on the SF 26, Award/Contract, and references the new form at FAR 53.214(a) and 53.215–1(a).

No respondents submitted comments on the proposed rule.

II. Executive Order 12866 and 13563

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD, GSA, and NASA determined that this rule is not excessively burdensome to the public, and is consistent with FAR drafting conventions.

III. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it is solely a clarification for the benefit of Government contracting officers and does not make any substantive changes to current policy.

IV. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: March 24, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 53 as set forth below:

PART 53—FORMS

■ 1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

53.214 [Amended]

■ 2. Amend section 53.214 by removing from paragraph (a) "*SF 26 (APR 2008)*" and adding "*SF 26 (Rev. 5/2011)*" in its place.

53.215–1 [Amended]

■ 3. Amend section 53.215–1 by removing from paragraph (a) "*SF 26 (APR 2008)*" and adding "*SF 26 (Rev. 5/2011)*" in its place.

■ 4. Revise section 53.301–26 to read as follows:

53.301–26 Award/Contract.

BILLING CODE 6820–EP–P

AWARD/CONTRACT	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) ▶	RATING	PAGE OF PAGES
2. CONTRACT *(Proc. Inst. Indent.)* NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQUEST/PROJECT NO.	

5. ISSUED BY	CODE	6. ADMINISTERED BY *(If other than Item 5)*	CODE

7. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State and ZIP Code)*	8. DELIVERY ☐ FOB ORIGIN ☐ OTHER *(See below)*
	9. DISCOUNT FOR PROMPT PAYMENT
CODE / FACILITY CODE	10. SUBMIT INVOICES *(4 copies unless otherwise specified)* TO THE ADDRESS SHOWN IN ▶ ITEM

11. SHIP TO/MARK FOR	CODE	12. PAYMENT WILL BE MADE BY	CODE

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:	14. ACCOUNTING AND APPROPRIATION DATA
☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )	

15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
				15G. TOTAL AMOUNT OF CONTRACT ▶	$

16. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

CONTRACTING OFFICER WILL COMPLETE ITEM 17 (SEALED-BID OR NEGOTIATED PROCUREMENT) OR 18 (SEALED-BID PROCUREMENT) AS APPLICABLE

17. ☐ CONTRACTOR'S NEGOTIATED AGREEMENT *(Contractor is required to sign this document and return _____ copies to issuing office.)* Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. *(Attachments are listed herein.)*

18. ☐ SEALED-BID AWARD (*Contractor is not required to sign this document.)* Your bid on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the terms listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your bid, and (b) this award/contract. No further contractual document is necessary. (Block 18 should be checked only when awarding a sealed-bid contract.)

19A. NAME AND TITLE OF SIGNER *(Type or Print)*		20A. NAME OF CONTRACTING OFFICER	
19B. NAME OF CONTRACTOR BY _____ *(Signature of person authorized to sign)*	19C. DATE SIGNED	20B. UNITED STATES OF AMERICA BY _____ *(Signature of Contracting Officer)*	20C. DATE SIGNED

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STANDARD FORM 26 (REV. 5/2011)
Prescribed by GSA - FAR (48 CFR) 53.214(a)

[FR Doc. 2011–7369 Filed 3–31–11; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0077, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–51; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–51, which amend the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–51, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–51 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–51

Item	Subject	FAR case	Analyst
*I	Women-Owned Small Business Program (Interim) (WOSB)	2010–015	Morgan.
II	Clarification of Standard Form 26—Award/Contract	2009–029	Jackson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–51 amends the FAR as specified below:

Item I—Women-Owned Small Business (WOSB) Program (FAR Case 2010–015) (Interim)

This interim rule amends the FAR to add subpart 19.15, Women-Owned Small Business Program, which will assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small business (WOSB) concerns.

Agencies may restrict competition to economically disadvantaged women-owned small business (EDWOSB) concerns for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration has determined that WOSB concerns are underrepresented in Federal procurement. For NAICS code industries where WOSB concerns are not just underrepresented, but substantially underrepresented, agencies may restrict competition to WOSB concerns eligible under the WOSB Program.

EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be owned and controlled by one or more women who are citizens of the United States. An EDWOSB concern is automatically a WOSB concern eligible under the WOSB Program.

Item II—Clarification of Standard Form 26—Award/Contract (FAR Case 2009–029)

This final rule amends the FAR to revise FAR part 53 to amend the Standard Form (SF) 26, Award/Contract, above blocks 17 and 18 and in block 18 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed bid contract. The changes will not prevent contracting officers from using block 17 of the SF 26 when awarding negotiated procurements in which the signature of both parties, on a single document, is required; it will only prohibit them from using block 18 of the SF 26 when awarding negotiated procurements.

Dated: March 24, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–7370 Filed 3–31–11; 8:45 am]
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FEDERAL REGISTER

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Part III

General Services Administration

41 CFR Parts 300–3, 300–70, 302–1, et al.
Federal Travel Regulation; FTR Cases 2007–304 and 2003–309, Relocation Allowances; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 300–70, 302–1, 302–2, 302–3, 302–4, 302–5, 302–6, 302–7, 302–9, 302–11, 302–12, 302–15, and 302–16

[FTR Amendment 2011–01; FTR Cases 2007–304 and 2003–309; Docket Number 2007–0002, Sequence 7]

RIN 3090–AI37

Federal Travel Regulation; FTR Cases 2007–304 and 2003–309, Relocation Allowances

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA), Office of Governmentwide Policy (OGP) continually reviews and adjusts policies as part of its ongoing mission to provide policy assistance to Government agencies subject to the Federal Travel Regulation (FTR). This final rule is a combination of two previous proposed rules that were published in the **Federal Register** on November 23, 2004 and August 3, 2007. The result is a unified, single final rule that addresses a wide range of relocation issues.

DATES: *Effective Date:* This final rule is effective August 1, 2011.

FOR FURTHER INFORMATION CONTACT: The General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Pam Silvis-Zelasko, Office of Travel, Transportation and Asset Management (MT), General Services Administration at (202) 219–7749 or e-mail at *pamela.silvis-zelasko@gsa.gov.* Please cite FTR Amendment 2011–01; FTR cases 2003–309 and 2007–304.

SUPPLEMENTARY INFORMATION:

A. Background

The GSA Office of Governmentwide Policy (OGP) routinely reviews the relocation regulations under its purview to address current Government relocation needs, to incorporate private industry policies and best practices that fit well into the Federal setting, and to adapt to changes in the marketplace.

In 2002, GSA created the Relocation Best Practices Committee (RBPC), consisting of Government and private industry relocation experts, to examine Government relocation policy. After benchmarking with the private sector experts, the RBPC Government policy experts created a proposed rule summarizing the work of the RBPC.

The GSA then chartered the Governmentwide Relocation Advisory Board (GRAB) through the Federal Advisory Committee Act, on July 9, 2004, to allow for the use of private industry expertise in both the rulemaking process and possible legislative actions involving Government relocation policy. As a part of its wide-ranging mission, the GRAB reviewed and updated the RBPC's proposals. The resulting proposed rule, based primarily on the RBPC's recommendations, was published in the **Federal Register** on November 23, 2004 (69 FR 68111).

The GRAB submitted its comprehensive Findings and Recommendations on September 15, 2005. If fully implemented through regulation, legislation, and operations, the 100-plus recommendations of the GRAB would align Government relocation practices with private sector best practices. They also would improve the overall management of Government relocation programs and reduce costs. The GRAB Findings and Recommendations and corresponding documents may be accessed at GSA's Web site at *http://www.gsa.gov/grab.*

GSA's relocation experts analyzed the GRAB regulatory changes and developed a second proposed rule, which was published in the **Federal Register** on August 3, 2007 (72 FR 43216).

Due to the long policy-development process, GSA combined the RBPC and GRAB proposed rules into this one final rule. This final rule implements many of the changes sought by both committees and contains additional changes to the FTR.

B. Summary of Comments Received

GSA extends its thanks to all the interested parties that commented on the RBPC proposed rule (69 FR 68111, November 23, 2004) and the GRAB proposed rule (72 FR 43216, August 3, 2007).

In response to the RBPC proposed rule, GSA received over 100 pages of comments from 26 different entities (13 Federal agencies, 6 private industry companies, 4 individuals, 2 unions, and 1 trade association). In response to the GRAB proposed rule, GSA received comments from 9 entities (4 Federal agencies, 1 trade association, 1 provider of support and technical assistance, and 3 relocation services companies).

The comments generally were supportive of the work of the RBPC and the GRAB, although some comments disagreed with specific aspects. All comments were carefully considered in the development of this final rule.

The discussion of comments below is arranged according to the section of the regulation affected by this final rule.

GSA has not included four issues from the proposed rules in this final rule, and the explanation of why they are not included appears at the end of this "Summary of Comments Received" section.

Terms and Conditions

This final rule adds the following definitions to section 300–3.1: Accompanied baggage, amended value sale, appraised value sale, buyer value option (BVO), and relocation services company (RSC). It also revises the definitions of non-foreign area and household goods.

The complexity of many of these terms can be confusing. Several of the comments raised this and provided suggestions in order to clarify the definitions. In particular, the definition of an amended value sale in the proposed rule insisted on a selling price higher than or equal to the appraised value offer. Several comments demonstrated that with proper use of home marketing incentive programs, the actual selling price might be lower and still acceptable to both parties. GSA agrees and changed the definition.

Data Systems, Reporting, and Relocation Program Management

The RBPC proposed rule included seven new sections for part 302–2, subpart B. Those changes would have established new agency responsibilities related to the successful management of agency relocation programs. FTR section 302–2.200 in the RBPC proposed rule also gave general guidance for relocation program management.

GSA received a wide range of comments on these proposed sections. GSA wrote this final rule in a manner that did not require inclusion of these seven sections from the RBPC proposed rule. Instead, GSA has revised part 300–70, subpart A, and added a subpart B to part 302–1.

Several comments asked GSA to clarify the terms "relocation management program," "relocation payment system," and "relocation management reporting system." In addition, many comments expressed concern about the due date for the first required reports.

In response to these comments, GSA has written three new sections and placed them in part 302–1, General Rules, rather than part 302–2. The new sections describe a comprehensive

relocation management program and urge agencies to move toward integrating all relocation processes into a single electronic environment.

Also, GSA removed the due date for agencies to report relocation data from the regulation and changed from biennial reports to annual reports. Use of a 2-year reporting period results in stale data that are less useful in policy creation. GSA will work with agencies to develop the list of data elements to be reported and to select the best startup date for annual reporting. More information on this section will be available in FTR Bulletins issued periodically by OGP and available on the Internet at *http://www.gsa.gov/ftrbulletins.*

Some comments expressed concerns that GSA was leaning towards a sole source contract with a relocation data service provider; this is not GSA's intent. GSA envisions agencies using commercial off-the-shelf software, data warehousing systems, or tools built by the agency and/or contracting to meet their needs for data management, all obtained through competition.

Commute to New Job Location via Commonly Traveled Routes

This final rule amends sections 302–2.6 and 302–11.2 to bring the FTR into conformance with the distance test guidelines in *Internal Revenue Service Publication 521, Moving Expenses.* The distance test is met when the new official station is at least 50 miles further from the employee's current residence than the old official station is from the same residence. For example, if the old official station is 3 miles from the current residence, then the new official station must be at least 53 miles from that same residence in order to receive relocation expenses for residence transactions. The distance between the official station and residence is the shortest of the commonly traveled routes between them. The distance test does not take into consideration the location of a new residence.

Reduction in Time for Relocations and Relocation Extensions

GSA received seven comments on the RBPC proposal to reduce the time for settling relocation transactions from two years to one year. GSA received essentially the same comments from the same seven organizations on the proposal to reduce extensions from two years to one year. These proposals affect FTR sections 302–2.8 through 302–2.11, 302–2.110, 302–11.21, 302–11.22, 302–11.404, 302–11.420, 302–11.421, and 302–15.10.

Three organizations supported the proposals, with all of them indicating that the proposals should reduce outstanding obligations and ensure that transferees will move into their new positions and begin work quickly. Four organizations objected to the proposals. All that objected argued that it may be difficult for some transferees to complete their residence transactions in one year.

GSA recognizes that reducing the maximum time to one year plus a 1-year extension may be challenging for some agencies; however, GSA believes that this risk is less significant than the potential benefits. The most significant benefit is moving transferees into their new positions as quickly as possible, which is a basic objective of Federal relocation policy. Giving most transferees only one year to complete their residence transactions will assist in meeting this objective.

The other significant benefit of reducing the time limit is reducing the number of years in which an employee may incur a debt against the Government. Funds used for relocation are, in most cases, obtained from monies that were appropriated for a specific year. Allowing employees to incur debts against the Government for four years, as currently permitted by the FTR, is a challenge for Federal finance managers. One comment noted that claims for reimbursement against the Government can be made for up to six years, under Title 31 of the United States Code, Chapter 37. This six-year period is a statutory requirement, which GSA does not possess the ability to change, and will therefore remain the same.

Disclosure Statements

This final rule amends section 302–2.12, adds two new sections to part 302–2, subpart A, and amends section 302–2.100 to require disclosure statements as part of the service agreement, which will prevent duplication of funding between two agencies or a private source. Most of the comments received regarding this part of the RBPC proposed rule favored its inclusion. One comment suggested that GSA direct the agencies to add this disclosure statement to relocations that are currently underway. GSA does not want to change the premise that a relocation must follow the provisions in place at the time of initiation, so this suggestion has not been adopted.

Required Counseling

This final rule amends section 302–2.103 to require that agencies provide counseling to relocating employees. The agencies should offer the counseling at the earliest possible time. If the agency chooses, this counseling may take place after the selection but prior to the acceptance of the job offer. This counseling is important because it can assist employees in making more informed decisions and allow them to play a more active role in their relocation. It is very important that employees understand their options when selling and/or buying a residence because of the enormous financial implications. This counseling can be provided by either the agencies or contractors.

Separation Travel Timing and Extensions

The portion of the RBPC proposed rule relating to separation travel timing and extensions for Senior Executive Service personnel did not generate any negative comments; therefore it is included with substantially the same language in this final rule. However, GSA has made minor revisions to the proposed language of the RBPC to create a more efficient solution and avoid potential confusion. These changes are found in this final rule in revised section 302–3.315.

Househunting Trip (HHT) Per Diems

This final rule amends section 302–5.13, and adds a reference to it in the current section 302–4.100, to make the standard CONUS rate the operative per diem rate for calculating actual expense househunting trips reimbursement and clarifies the availability and use of lump-sum reimbursements. The GRAB final report explains:

* * *, the implementing regulations for FETRA [Federal Employee Travel Reform Act] * * * created an unfortunate inconsistency between HHT and TQSE [temporary quarters subsistence expense] benefits. From that time and continuing today, the traditional method for claiming HHT expenses is linked to the locality rate (FTR Part [*sic*] 302–5.13 and Part [*sic*] 301–11.100), while the traditional method for claiming TQSE expenses is linked to the CONUS [Continental United States] rate (FTR Part [*sic*] 302–6.102). Not only is this inconsistent from a practical and logical point of view, it creates an unintended constraint on encouraging the use of a more cost-effective lump sum HHT reimbursement method: Why should any transferee use the lump sum benefit granting 5 days' worth of the locality rate [*actually, the lump sum method uses a multiplier of 6.25 days for an employee and spouse going on the trip or a multiplier of 5 days for only one person going on the HHT*], when they could use the traditional method and receive up to 10 days' [sic] worth of the locality rate? Simply saving the trouble of submitting receipts is not a sufficient motivator to forego 5 days' [sic]

worth of the locality rate. Even if transferees found that the ease of paperwork and the benefit of having their reimbursement paid up-front convinced them to use the lump sum benefit anyway, the fact that the FTR contains this inconsistency is reason enough to make the change.

This situation arose when the FTR was converted to its present plain language format. In the previous edition of the FTR, the HHT regulation mirrored the temporary quarters subsistence expense (TQSE) process, where the agency either reimbursed the employee's actual expenses for up to 120 days at the lower standard CONUS rate or calculated a lump sum reimbursement for up to 30 days, at the higher locality rate.

Transferees do actually choose the lump sum option for TQSE, but they do not tend to choose the lump sum for HHTs because the error removed the intended economic incentive. Agencies report that because of the error, the lump sum option for HHTs is underutilized, while the lump sum option for TQSE is frequently chosen.

By emulating the TQSE regulations and correcting the error that GSA made regarding the existing HHT regulation, real economic incentives will be realized that will assist employees to manage their HHTs more efficiently and economically. Additionally, this provides employees some latitude in allocating those funds to meet an employee's unique needs that may not be specifically allowed under the reimbursement method; these might include, for example, childcare or pet kenneling.

While this change reduces the HHT benefit for those selecting the actual expense option, the purpose of this change is to correct an error in the regulation and to support the use of lump sum HHT payments for this agency-optional benefit. Several agencies viewed this proposed change as a reduction of benefits and voiced their opposition. GSA believes that the correction is appropriate, because it establishes the right incentives. As a result, GSA is changing the FTR as stated in the GRAB proposed rule.

One private industry comment noted that while the use of CONUS rates for actual expense TQSE may make sense, there may be a problem when the lesser CONUS amount is given to an employee on a short duration HHT because the HHT is closer to a TDY, and it may be difficult to find long term lodging that will be less expensive. GSA's response is that the lump sum option gives the employee an incentive to make the trip quickly and efficiently, without the administrative burden of monitoring the receipts and the higher cost of an actual expense HHT.

Two Government comments correctly noted the multiplier for a spouse and an employee on a HHT should be 1.75 and not 2. GSA agrees and is making the change.

The Terms Fixed Amount/Lump Sum

No one objected to changing the term "fixed amount" to "lump sum," because "lump sum" is a standard industry term. This change is, therefore, incorporated into this final rule as initially proposed in the RBPC proposed rule. It affects a number of sections in parts 302–5 and 302–6.

Mode of Transportation for Househunting Trips

This final rule revises section 302–5.14 in subpart A, and adds a new section to part 302–5, subpart B, to establish a threshold for determining which mode of transportation (POV or common carrier) should be authorized for househunting trips. This final rule sets a threshold of 250 miles, below which the agency normally will authorize driving a POV. Several comments on the RBPC proposed rule noted the Government cannot force an employee to drive a POV. While FTR section 302–5.14 does allow limiting transportation reimbursement to the authorized modes, including POV, this final rule recognizes exceptions and offers several examples of circumstances in which restricting an employee reimbursement to POV mileage may not be appropriate.

Lump Sum Payments for TQSE

This final rule revises part 302–6, subpart C, to encourage the use of lump sum payments for TQSE, to allow the agency to require proof that temporary quarters (TQ) were actually occupied, and to simplify the discussion of factors to consider related to lump sum TQSE.

Some comments based on the RBPC proposed rule asked GSA to require proof that the employee occupied TQ in every case. Other comments stated that the option for agencies to request proof did not need to exist at all. GSA has decided to make this proof something that an agency may choose, retaining the language from the proposed rule on this point.

Other comments asked that GSA provide the language and/or a form for the proof that the agency may require. GSA has decided to give the agencies the discretion to choose what form of proof they will accept due to the wide variation of systems and processes amongst agencies. GSA will, as always, offer its assistance to any agency that needs it, but does not feel that a mandate would clarify this issue.

Factors To Consider When Offering Lump Sum Payments

GSA received no objections to the RBPC proposed revision to section 302–6.304, which explains the factors an agency should consider when determining whether to offer an employee a lump sum payment option for TQSE; therefore, the language in the RBPC proposed rule is retained without change.

Lump Sum TQSE/Certification of TQSE Expenses

This final rule adds new section 302–6.305 based on the RBPC proposed rule. This new section requires that agencies obtain a statement, in advance, from employees who select lump sum TQSE reimbursement. This statement will certify that TQSE expenses will be incurred in order to receive the lump sum payment. Three agencies supported the use of these certifying statements.

Three other comments centered on the difficulty in creating a distinct document for those receiving TQSE. This is not the intention of this rule. Similar to the addition of disclosure statements in section 302–2.100, the intent here is for agencies to make this statement part of the initial service agreement rather than a separate document. A lump sum program is based upon simplicity and any lump sum program should maintain this simplicity in its implementation.

Two additional comments stated that this certification is too simple a threshold to meet and that any agency program providing TQSE that is too expensive should correct their internal process without burdening the other agencies. GSA agrees that this certification does not free any agency from monitoring their TQSE program and eliminating the actual (or lump sum option) if it is abused by agency employees. GSA also believes that adding the statement to the service agreement is not a significant burden for any agency.

Payment to the Employees of a TQSE Lump Sum

New section 302–3.306 requires that a TQSE lump sum payment be made to an employee prior to occupancy of temporary quarters (TQ). The main advantage of using lump sum TQSE is that an employee will know exactly what he or she is going to receive for subsistence expenses and how long the money has to last. This removes some of the confusion inherent in actual expense TQSE. GSA received few

comments on this point, thus, the language from the RBPC proposed rule has been retained in this final rule.

Definition of "18,000 Pounds Net"

The lack of a definition for "18,000 pounds net" in section 302–7.2 has caused frequent confusion. All of the comments received in regards to this subject either favored the change in the RBPC proposed rule or asked for small revisions that GSA has adopted.

However, the RBPC proposed rule's definition of "net" was not clear as it could be interpreted to apply only to the weight of the household goods or to the difference in the weight between the unloaded weight of the truck and the loaded weight of the truck (the latter of which would include the weight of the truck, the household goods, and any necessary packing materials). GSA has chosen to establish a simple rule that allows for up to 2,000 pounds of packing materials for uncrated or van line shipments, in the newly designated section 302–7.13(a). Thus, in most circumstances, the Government will pay for the shipment of up to 18,000 net pounds of uncrated household goods plus up to 2,000 pounds of packing materials. The employee will be responsible for the cost of packing and shipping anything over the 18,000 pounds net weight allowance.

GSA recognizes that some agencies impose lower weight limits in special circumstances, especially when transferring employees into government-furnished quarters in CONUS or OCONUS. This final rule explicitly allows agencies to impose lower limits as appropriate, including lower limits on the weight of packing materials.

Rules for Shipping Professional Books, Papers, and Equipment (PBP&E)

Since there were no comments about the proposed changes to sections 302–7.4 and § 302–7.5, relating to PBP&E, the language in the RBPC proposed rule is retained without change.

Authorized Origin and Destination Points for the Transportation of Household Goods (HHG) and PBP&E

DoD requested that section 302–7.6 further define the authorized origin and destination points for household goods shipments. GSA agreed with the request and has refined the chart in this section. This action is not a change in policy but rather a clarification of practices that already exist.

Where Household Goods (HHG) May Be Temporarily Stored

The RBPC proposed rule clarified where HHG may be temporarily stored (section 302–7.8). This received favorable comments. Two comments suggested further modifications that would have made storage at the destination the primary choice. GSA has chosen to keep this new paragraph as simple as possible, so it remains unchanged from the proposed rule.

Limit on Time HHG Can Be Temporarily Stored

GSA received 23 comments on both proposed rules to change the current section 302–7.8, which would reduce the overall time allowed for temporary storage.

GSA received 19 comments on the RBPC proposal to reduce the overall time allowed for temporary storage from 90 days plus a possible 90-day extension to 60 days plus a possible 90-day extension. The proposed rule also stated: "The number of days authorized for HHG storage must coincide with the number of days authorized for TQSE." The summary of comments received on the RBPC proposal is as follows:

- Three comments favored the changes as proposed.
- Four comments asked that GSA reverse the pairing, so that the initial period would be 90 days and the possible extension would be 60 days.
- One comment said that 150 days overall can be too short for moves involving OCONUS locations. GSA resolved this by making the 60-day period apply only to CONUS to CONUS moves.
- Seven comments said that the number of TQSE days should not be linked to the number of temporary storage days.
- Four comments opposed the change (with three of them stating that TQSE days and temporary storage days should not be linked).

The GRAB proposed an even greater reduction than the RBPC proposal. GSA received four comments on the GRAB proposal to reduce the overall time allowed for temporary storage to 60 days plus a possible 30-day extension.

- One comment suggested changing the time allowed for temporary storage to 45 days with a possible 45-day extension.
- One comment suggested linking the temporary storage days to TQSE.
- One comment said the number of days allowed should be left at ninety days, but also requested the ability to grant a waiver for an indefinite time period in extenuating circumstances.
- One comment rejected the changes.

In summary, most comments opposed linking the number of storage days and the number of TQSE days, and most comments expressly or implicitly agreed with reducing the total number of days allowed to 150. GSA agrees that the two should not be linked, but GSA disagrees with the comments that suggested reversing the pairing. GSA believes that the initial 60-day period sends the right message to the employee regarding the intended purpose of temporary storage, while the longer possible extension allows the agency to deal with a wider variety of special circumstances.

Thus, this final rule does not link HHG storage days to TQSE days. This final rule allows an initial period of 60 days with a possible extension of up to 90 days for CONUS to CONUS moves, and it keeps the 90 days with a possible 90-day extension for moves that have an authorized origin and/or destination that is OCONUS.

The changes above appear in the newly redesignated sections 302–7.9 and 302–7.10.

Method of Shipment for HHG, PBP&E, and Temporary Storage

GSA received no relevant comment on the RBPC proposal to clarify section 302–7.16, so this final rule includes the text as initially proposed.

Responsibility for Payment of Weight Additives

The RBPC proposed rule, regarding the newly redesignated section 302–7.21, detailed the employee's responsibility for payment of weight additives. Weight additives are additional costs charged by the carrier for oversized or bulky items. These costs are generally assessed by the carrier in terms of additional weight to the shipment, so that the number of pounds charged often exceeds the actual weight of the item(s). The existing § 302–7.20 conflicts with a General Services Board of Contract Appeals (GSBCA) decision (GSBCA 16131–RELO, July 21, 2003).

This final rule adopts the rationale of the GSBCA decision, thereby not making the transferee responsible for the extra weight caused by using weight additives. Since weight additives are not related to the true weight of the items shipped, they should not be included in the statutorily based 18,000 pound net limit.

One comment stated that, as written, the proposed rule held the employee responsible for both the extra weight and the preparation charges. This final rule makes the employee responsible for the cost of building any special packing or crating, as well as the cost of any special handling that the weight additive items require; at the same time, only their actual weight will be considered in determining whether the employee has exceeded the 18,000

pounds net weight allowance for shipping purposes.

Unaccompanied Air Baggage (UAB)

The sections of the RBPC proposed rule that dealt with Unaccompanied Air Baggage (UAB) received generally positive comments. One Government comment did ask for authority to set individual agency limits on the weight of UAB. GSA did not include a provision to do this as UAB is already limited by being included in the overall HHG weight limit. This final rule redesignates part 302–7, subpart D, as subpart E (Agency Responsibilities) and adds a new subpart D (Baggage Allowance) to incorporate policies for including UAB as part of, and not in addition to, the HHG weight allowance for moves from a CONUS (Continental United States) location to an OCONUS (Other than Continental United States) location, OCONUS to OCONUS, and OCONUS to CONUS. GSA has addressed the remaining comments by making a number of minor textual additions.

The RBPC proposed rule would have added UAB to the discussion of PBP&E in section 302–7.4. In this final rule, GSA has chosen not to discuss UAB in this section, because PBP&E is not part of the 18,000 pounds net weight allowance for HHG (though it is often included in the HHG shipment), while UAB is always part of the allowance. GSA prefers, for regulatory consistency, to keep all of the material related to UAB together, in part 302–7, subpart D.

It is important for agencies to note that any UAB reduces the amount of HHG that can be shipped, because the statutes that govern the FTR do not provide for a separate allowance for UAB above and beyond the 18,000 pounds net HHG allowance. Another important point to note is that the FTR does not permit UAB for domestic (CONUS to CONUS) relocations.

Two comments stated a preference for using the lower UAB weights that the Department of State (DoS) prescribes for members of the Foreign Service, as opposed to those provided for uniformed personnel by the DoD in the Joint Federal Travel Regulations (DoS allows 250 pounds for the employee, while DoD allows 350 pounds). In section 302–7.302, GSA is adopting the more generous DoD UAB weights, choosing to provide more flexibility for agencies despite the small added cost. Agencies subject to the FTR that are authorized to use and have incorporated the DoS Foreign Affairs Manual (FAM) into their internal agency regulations for overseas travel will continue to receive lesser amounts of UAB in conformity with the FAM. However, under the FAM, UAB is not part of the 18,000 pounds net weight allowance. The FAM limits would continue in use unless these agencies choose to change their internal policies to adopt the FTR UAB limits.

Arranging and Paying for Transportation of HHG and UAB

This final rule adds a new section, section 302–7.405, which regulates the arranging and paying for transportation of HHG and UAB. As several comments noted, the RBPC proposed rule included an erroneous table for constructing the cost of this transportation. This final rule replaces this table with a simple formula.

Number of POVs That May Be Transported Within CONUS at Government Expense

This final rule amends section 302–9.302, and adds a new section to part 302–9, subpart F, to limit the number of POVs that may be transported within CONUS at Government expense to two. The current limit of one POV for the transportation, at Government expense, for OCONUS remains unchanged.

Two commenters on the RBPC proposed rule stated that agencies should be able to make a decision to ship more than two POVs on a case by case basis. GSA, the RBPC, and two other comments believe the proposed limit of two POVs for CONUS relocations is a reasonable requirement to add to the regulation. A limit is necessary, and two was the consensus of the agencies involved in the RPBC.

GSA received strong negative comments on the proposed rule provision in sections 302–9.301, 302–9.504, and 302–9.505, that a POV shipped must have a value larger than the shipping cost. Instead, this final rule requires an agency to consider whether the POV is in operating order and is legally titled and tagged prior to authorizing transportation of the POV.

The Phrase "With Appropriate Supporting Documentation Provided by You"

The RBPC proposed rule replaced the introductory paragraph in section 302–11.200 to re-emphasize that residence transaction costs may not exceed those customarily charged in the locality where the residence is located. One comment suggested that the burden of proof be placed on the employee; this has always been true, but the FTR did not say this explicitly.

Therefore, this final rule adds the phrase "with appropriate supporting documentation provided by you," to clarify that the burden of proof regarding a customary expense in a geographic area rests with the employee. This change to section 302–11.200 strengthens the wording to ensure that the employee understands that he/she must provide appropriate supporting documentation to support a claim for reimbursement.

A single comment was made against this provision, preferring language stating, "as long as the employee is acting within reason, the transaction fees should be reimbursed." This is a weaker standard, which GSA chose not to adopt because it does not provide a uniformly clear standard to measure against.

Homesale Counseling

The GRAB proposed rule, in part 302–12, included a requirement that employees enrolled in a homesale program agree to participate in counseling.

One problem inherent in homesale programs is the complexity of the various programs. Direct reimbursement, by contrast, can be much easier to understand. If savings are going to be realized through the use of homesale programs, employees must understand the options thoroughly, preferably before making the decision to participate in a homesale program. The best way to enhance the employee's understanding is by having the employee participate in counseling that details the process and options. The counseling helps the agency, the relocation services company (RSC), and the employee, because it clarifies what the employee must do to participate in the program and what options the employee should consider while selling his or her home. The agency has a responsibility to monitor these counseling sessions and to ensure that the materials, and the way that they are presented, are fair and useful to the employee.

The comments on the GRAB proposed rule were generally supportive of mandatory counseling. However, several of the comments asked that the regulation require that the counseling sessions occur before the employee is permitted to list their residence for sale. GSA recognizes this as a best practice that fits many situations, and agencies are welcome to include this requirement as a provision in contracts with RSCs. However, GSA believes that mandating this on a Governmentwide basis would be inappropriate, because there are many situations in which such a requirement may impose a serious burden on the agency and/or the employee.

One comment to this provision asked what venues would be permissible for the required counseling. GSA has addressed this in section 302–12.3 by stating that counseling may be provided by the agency or the RSC and may occur electronically or in person.

Evaluation of Relocation Programs

This final rule requires that agencies regularly examine and evaluate the objectives and relative costs of their relocation benefits and management processes to determine whether or not a comprehensive homesale program should be part of their relocation programs, under section 302–12.105.

The Government is significantly different from private industry in their contracts with RSCs for administering homesale programs. The Government cannot legally assume title to the property from a homesale program, while most private sector companies using RSCs do assume title. Therefore, the RSCs charge the Government more than they charge private companies, to cover the additional risk that the RSC assumes for each property. This incorrectly gives the appearance to agencies that RSC-managed homesale programs are more expensive than direct reimbursement for homesale costs. Other factors also make the homesale programs appear more expensive to Government managers. As the GRAB final report states:

> Most agencies that do not offer their transferees access to a home-sale program base the decision on a perception that reimbursements of direct home-sale costs are lower than the fees generally associated with a RMC [RSC] home-sale program (*e.g.,* up to 10% of the home-sale price for direct reimbursement versus up to 23.5% for a RMC [RSC] home-sale program under [GSA Multiple Awards] Schedule 48). This perception ignores the fact that direct reimbursements are taxable income to the employee and, therefore, typically require added reimbursement from the Government to cover that tax liability, whereas properly structured RMC-[RSC-] assisted homesales are not.

The GRAB recommended that the FTR make it mandatory that each agency implement a comprehensive homesale program, including amended, appraised, and BVO sales. GSA strongly supports homesale programs but does not have statutory authority to mandate that all agencies implement a homesale program. Under current statutes, the employee always has the right to demand direct reimbursement; that is, the employee cannot be forced into a homesale program.

This final rule includes a number of provisions to address homesale programs, as discussed further throughout this final rule section.

Agency Flexibility in Broker Selection

The GRAB and various commenters to the GRAB proposed rule recommended that GSA mandate transferees to use brokers provided by the RSC. While GSA recognizes that many private sector companies include this requirement in their contracts, GSA does not believe that it should be mandatory across the Government. GSA has, therefore, in section 302–12.111, given agencies express permission to include this provision in their contracts without a Governmentwide mandate.

One comment asked: "Who provides the broker?" GSA does not believe it is appropriate to mandate an answer to this question. Rather, this should be either a contractual issue between the agency and the relocation services provider, or it should be left to the determination of the employee.

Agency Flexibility in Mortgage Service Provider Selection

The GRAB and various commenters to the GRAB proposed rule recommended that GSA mandate transferees to use mortgage service providers provided by the RSC. This is prohibited under the Real Estate Procedures Settlement Act (RESPA), and this regulation cites that prohibition in the new section 302–12.112.

Potential Tax Issues From a Homesale Program

A comment accurately stated that the tax implications of the BVO option are still unclear. GSA is carefully monitoring the ongoing discussions between the RSCs and the IRS. GSA believes that a properly structured homesale program will typically relieve the employee and agency of taxes on the homesale costs, thereby reducing the overall cost to the agency that is funding the relocation. This rule also reminds the agencies, in section 302–12.113(a), to consider the tax implications in structuring their homesale programs.

Direct Payment of Property Management Service Fees

Only one comment to the GRAB proposed rule even noted the revision of section 302–15.70, which clarifies the allowance for direct payment of property management service fees to the Government employee, so this change is included in this final rule as initially proposed.

Allow Broader Use of the Miscellaneous Expense Allowance (MEA) Under Part 302–16

The FTR currently limits the MEA to expenses related to discontinuing or establishing a residence. The GRAB recommended that this limitation be removed, so that the transferee would be able to use the MEA to cover any expenses that emerge in a relocation, whether they are prior to or after the residence transactions. Quoting from the GRAB final report:

> Currently, the FTR does not provide any reimbursement mechanism for expenses incurred by employees relating to pet care, child care, or adult care for aging parents who are dependents of the relocating employee. The employee typically incurs these costs while taking a househunting trip. Additionally, employees are 'challenged' as the FTR does not provide for any reimbursement for children to accompany the employee on a househunting trip.

Much like the lump sum househunting payments mentioned above, the employee should be free to use his or her judgment to make sure the MEA money is used wisely. In private industry, such payments are used to give transferees monies to handle their needs without having to voucher for reimbursement. This change also eliminates the need for the Government to specify what is covered by the MEA.

A standard payment for private industry is based on a month's salary, capped at a specified amount, such as $7,500. At this time, the MEA payment to Federal employees remains statutorily limited to one or two week's salary for a GS–13 step 10, depending upon family status. GSA has addressed this limitation in a legislative proposal that would give the Administrator authority to set an appropriate rate without the current rigid restrictions.

GSA received no negative comments on the above proposal in the GRAB proposed rule and several positive comments from both industry and Federal agencies. Thus, GSA is adopting this proposal as final.

This final rule incorporates one additional change in the MEA section, using the phrase "and similar items" when referring to a list of various items. The General Services Board of Contract Appeals (now the Civilian Board of Contract Appeals) prefers this language to the phrase "including but not limited to" that the FTR currently uses.

Proposed Change Handled by Another Final Rule and Not Addressed in This Rule: Mileage Reimbursement Rate

The POV mileage rate for PCS travel in section 302–4.300, which GSA initially included in the RBPC proposed

rule, was addressed in final rules published in the **Federal Register** on June 27, 2007 (72 FR 35187) and on December 11, 2007 (72 FR 70234).

Proposed Changes That Were Not Retained in the Final Rule

Days Allowed for HHT

The RBPC proposed rule would have reduced the maximum number of days allowed for a househunting trip under section 302–5.11 from 10 to 8. Based on the large number of negative comments GSA received on this provision and the internal discussions that followed, GSA agrees not to reduce the number of days for a househunting trip from 10 to 8 in this final rule. This section remains as currently stated in the regulation.

Actual Reimbursement for TQSE

In the RBPC proposed rule, GSA failed to highlight an important proposed change in the actual expenses reimbursement for TQSE. Specifically, GSA proposed to reduce the TQSE reimbursement in part 302–6, subpart B, for any authorized period in TQ above 30 days but failed to include this change in the list of proposed changes in the Preamble. This was an inadvertent error which unfortunately deprived GSA of most input.

In response to this error, one comment stated: "This is a major change and was easily left out of the background, if not intentionally hidden." This was not GSA's intention.

In the current economic environment, GSA believes that reducing the TQSE reimbursement will not assist agencies or employees because of the slow sales of residential properties. Scenarios where Government employees must be in TQ for longer than 30 days have become much more common. For these reasons, GSA is not at present reducing the TQSE reimbursement after 30 days.

Clarifying the Difference Between Mandatory and Discretionary Relocation Allowances

The GRAB wanted to ensure that the FTR highlights which relocation benefits are mandatory and which are discretionary. To do this, the GRAB identified two errors that needed to be corrected in the tables outlining benefits. GSA received no comments on this item in the GRAB proposed rule. However, in the time since publication of the proposed rule, GSA has discovered at least three additional errors in the tables. Therefore, to ensure that the tables and associated regulatory language are entirely correct, and to expedite these critical components of the FTR, GSA will address these items in their own separate rule.

Calculating Constructive Cost

GSA received several comments about RBPC proposed Appendix A to part 302–7. The proposed Appendix attempted to clarify the calculation of constructive cost. The comments all indicated the proposed new language would have created more confusion than clarity. GSA agrees; therefore, the RBPC proposed Appendix A to part 302–7 was not adopted.

Conditions Required for Use of a RSC

The GRAB proposed rule at section 302–12.3 contained several conditions to which an employee must agree before entering a contract with a RSC. These conditions are no longer considered best practices and therefore are not included in the new section 302–12.3 of this final rule. GSA also wishes to maintain flexibility during rapidly changing economic conditions; therefore, GSA will issue further guidance about RSCs by publishing a bulletin available at *http://www.gsa.gov/ftrbulletins.*

Standard RSC Contract Provisions

The GRAB proposed rule said that agencies should give first consideration to BVO and second consideration to amended value sales. GSA's review of the comments and internal discussions of this provision led to a different approach which, GSA believes, will accomplish the same objective in a more straightforward manner. Examples of RSC contract provisions are contained in new section 302–12.4, but these provisions are not to be considered mandatory. New section 302–12.4 also provides agencies with the flexibility to choose the RSC contract provisions that will work best for their own individual home sale programs. GSA will issue periodic bulletins at a later date, available at *http://www.gsa.gov/ftrbulletins,* to further address standard RSC contract provisions and to create a template for agencies to use when developing home sale programs. GSA is addressing this issue in bulletins instead of in this final rule to ensure that agencies can maintain maximum flexibility.

Agency Flexibilities in Listing Periods and Percentage of Guaranteed Offer

GSA initially intended to set the contract timeframes in a template that would have been included in the question and answer portion of the FTR. Because of changing market conditions, and several comments from the GRAB proposed rule noting different percentages and time periods, both higher and lower, it seems appropriate for GSA to avoid overly rigid rules. Instead, GSA has chosen to include this type of information in future FTR Bulletins and/or handbooks.

Issues Mentioned in Comments But Not Addressed in This Final Rule

Many of the remaining comments received are clearly of interest, but GSA is unable at this time to incorporate them into this final rule because of lack of legislative authority or because the comment was outside the scope of either proposed rule.

Change the Storage Allowance for the Temporary Storage of Household Goods by Amending Section 302–7.8

In a comment to the GRAB proposed rule, one Government agency asked GSA to extend the 180-day limit for temporary storage. GSA accommodated this request by granting the agency a waiver addressing the specific situation involved with this need.

Prepayment Fees on Residence Transactions

One comment to the RBPC proposed rule suggested that part 302–11, subpart C, be amended to cap prepayment penalty fees on residence transactions to three months interest on the loan balance, not to exceed $6,000 per property. This was a growing problem when interest rates were rising and it continues to be a problem for transferees selling refinanced properties. GSA is reviewing the issue, but will need more information about its prevalence before including this in the FTR.

Single Employees

One comment to the RBPC proposed rule pointed out that the proposed rule failed to address many issues that single employees face in transferring because, unlike a family, they do not have multiple TQSE payments to equal a larger sum. This issue is especially prevalent in transfers to higher cost areas. However, no statutory authority exists to treat single employees differently than married employees.

Relocation Income Tax Allowance (RITA) Calculation and Reimbursement

One comment to the RBPC proposed rule addressed a specific case concerning an agency's failure to perform the RITA calculation and reimbursement in an appropriate timeframe. The RITA section is currently being rewritten, and the team is aware of this comment.

Cost Analysis

Two comments to the RBPC proposed rule expressed concern because the proposed rule did not include a cost analysis of the regulatory changes. The

purpose of the new sections in sections 302–1.100 through 302–1.110 is to make it more likely that the agency reporting requirements in part 300–70 result in delivery of relocation cost data to GSA and the Office of Management and Budget (OMB) in a timely, accurate, and useful manner. The agency reporting requirements are currently mandatory, but not widely followed. As soon as agencies begin providing accurate and complete data, GSA and OMB will have the facts and figures to build stronger arguments to support regulatory and legislative changes based upon cost analyses. In the current Government environment, reliable data regarding relocations is not available without laborious voucher-by-voucher examination.

One of the two comments on cost analysis specifically compared the IRS-driven private industry practice to the Government relocation regulation practice, and stated that the RBPC and GRAB proposed rules would not reduce regulatory burden. It is GSA's and GRAB's position that in private industry, relocation is driven as much by human resource considerations as by IRS considerations, if not more so. Many private industry relocation packages, especially for individuals in executive or senior management positions, are tailored to the position. This is much less true in the Government, where as a general rule, one-size-fits-all regardless of position. By emulating private industry practices to the extent that makes legal and fiscal sense, the Government makes it easier to include a relocation package as part of a comprehensive human capital planning and retention program, as envisioned by the GRAB.

Spousal Employment Assistance

One comment on the RBPC proposed rule suggested that a provision for spousal employment assistance be included in the FTR. The comment said: "This assistance is needed most urgently by the military spouses who relocate more frequently than private sector spouses." Spousal employment assistance would require a legislative change before GSA could incorporate it into the FTR. Therefore, GSA has included a provision to cover spousal employment assistance in its legislative proposal.

C. Changes to Current FTR

This final rule—

- Corrects the authority citation for part 300–3;
- Amends section 300–3.1 to add the terms and definitions for "Accompanied Baggage," "Amended Value Sale," "Appraised Value Sale," "Buyer Value Option," and "Relocation Services Company," and revises the definitions for "Non-foreign area," and "Household Goods (HHG)," to include "Unaccompanied Air Baggage (UAB)";
- Corrects the authority citation for part 300–70;
- Revises sections 300–70.1 and 300–70.2 to incorporate data collection requirements;
- Adds a subpart B to part 302–1, containing three sections that describe a comprehensive relocation management system, urge agencies to adopt a comprehensive relocation management system, and reiterate the requirement to report to GSA on relocation activities. This final rule changes the report's frequency to annually but removes the specific due date for those reports from the FTR. Instead it specifies that the due date will be provided in future FTR Bulletins;
- Amends section 302–2.6 to follow the distance guidelines stated in *Internal Revenue Service Publication 521, Moving Expenses,* by requiring that the commute to the employee's new job location from his/her old residence increase by at least 50 miles, via the shortest commonly traveled routes, to be eligible for relocation benefits;
- Amends sections 302–2.8, 302–2.9, 302–2.10, 302–2.11, and 302–2.110 to reduce the length of time to complete a relocation from two years to one year;
- Further amends sections 302–2.11 and 302–2.110 to reduce the length of time for relocation extensions from two years to one year;
- Amends section 302–2.12 to include the duplicate disclosure statement as part of the service agreement;
- Adds new sections 302–2.20 and 302–2.21 to part 302–2, subpart A, redesignates current sections 302–2.20 through 302–2.22 as sections 302–2.22 through 302–2.24, and amends section 302–2.100, to require disclosure statements so that one Federal agency will not pay for relocation expenses that are being paid for by another Government agency or private source;
- Amends section 302–2.103 by adding paragraph (e) to require counseling of every relocating employee and to recommend counseling before an employee accepts a new position that requires relocation;
- Revises section 302–3.315 relating to separation travel timing and extensions;
- Amends section 302–4.100 to include a reference to section 302–5.13;
- Corrects the authority citation for 41 CFR part 302–5;
- Amends the chart in section 302–5.13 to make the standard CONUS rate the operative per diem rate for calculating actual expense househunting trip per diems, and clarifies the availability and use of lump sum reimbursements;
- Amends sections 302–5.15, 302–5.16, 302–5.18, 302–5.101, 302–5.103 (to be redesignated as sections 302–5.104, 302–6.11, 302–6.12, 302–6.301 and 302–6.304, respectively) by replacing the term "fixed amount" with the term "lump sum" and by other administrative changes, where applicable;
- Revises section 302–5.14, redesignates current section 302–5.103 as section 302–5.104, and inserts a new section 302–5.103, all to establish a 250-mile threshold for determining the mode of transportation (POV or common carrier) to be authorized for a househunting trip;
- Corrects the authority citation for 41 CFR part 302–6;
- Amends section 302–6.15 to correct citations;
- Amends part 302–6, subpart C, including adding a new section, to encourage the use of lump sum payments because of the administrative efficiency, as well as the potential for cost savings;
- Amends section 302–6.304 by revising it to explain the factors to consider when deciding to offer lump sum payments;
- Redesignates section 302–6.305 as section 302–6.307 and adds two new sections to subpart D, regarding TQSE payments, requiring employees who select lump sum TQSE reimbursement to certify that TQSE expenses will be incurred, and ensuring that payment to the employee of TQSE lump sum will be made prior to occupancy of TQ;
- Corrects the authority citation for part 302–7;
- Amends section 302–7.1(d) by adding citations;
- Revises section 302–7.2 and the table in newly designated 302–7.13 to clarify that the definition of 18,000 pounds net weight allowance for household goods does not include packing materials for uncrated and van line shipments;
- Replaces sections 302–7.4 and 302–7.5 to clarify who pays for shipping professional books, papers and equipment (PBP&E) and to explain what happens when a HHG shipment includes PBP&E and exceeds the net weight allowance;
- Replaces the current section 302–7.6 with a new section 302–7.6, which more clearly delineates authorized origin and destination points for HHG;

• Adds a new section 302–7.8 to clarify where HHG may be temporarily stored and redesignates sections 302–7.8 through 302–7.20 as sections 302–7.9 through 7.21;

• Amends the redesignated sections 302–7.9 and 302–7.10 to limit HHG storage to 60 days with a possible 90-day extension for CONUS to CONUS moves and keeps the 90 days with a possible 90-day extension for moves that have an authorized non-CONUS origin and/or destination;

• Revises newly designated section 302–7.16 to clarify the selection of the method of shipment as designated by agency;

• Revises newly designated section 302–7.21 to specify the responsibility for payment of weight additives;

• Redesignates and amends part 302–7, subpart D, as subpart E (Agency Responsibilities) and adds a new subpart D (Baggage Allowance) to incorporate policies for including unaccompanied air baggage in the HHG weight allowance;

• Amends the newly designated section 302–7.400 to revise three of the existing conditions and add three new conditions that agencies must consider in their policies and procedures;

• Revises the newly designated sections 302–7.401 through 302–7.403 to conform with other changes to part 302–7;

• Corrects the authority citation for part 302–9;

• Adds a new section 302–7.405, which provides guidance on arranging and paying for the transportation of HHG and unaccompanied air baggage;

• Amends sections 302–9.11, 302–9.140, and 302–9.170 to correct citations;

• Adds two additional conditions to section 302–9.301 that agencies must consider before authorizing transportation of a privately owned vehicle (POV) within CONUS, to ensure that agencies are not domestically transporting a POV unless it is in operating order and legally titled and tagged for driving;

• Amends section 302–9.302 to establish a limit for the number of POV's that may be transported within CONUS at Government expense at two;

• Redesignates current sections 302–9.501 through 302–9.505 as sections 302–9.502 through 302–9.506 and adds a new section 302–9.501 to incorporate the limit of 2 POVs shipped at Government expense;

• Revises the newly designated sections 302–9.505 and 302–9.506 to ensure that agencies are not domestically transporting a POV unless it is in operating order and legally titled and tagged for driving and to limit agency shipment of a POV to a distance of 600 miles or more;

• Revises section 302–11.2 and adds the requirement of agencies to follow the distance test specified in section 302–2.6;

• Revises section 302–11.21 to reduce the time limit for settlement of residence transactions from two years to one year;

• Revises section 302–11.22 to reduce the time limit for extensions for settlement of residence transactions from two years to one year;

• Amends section 302–11.200 by revising the introductory paragraph to clarify that reimbursement of residence transaction expenses is limited to amounts customarily charged where the residences are located with the requirement that the employee provide appropriate supporting documentation;

• Revises section 302–11.404 to reduce the time limit for settlement of residence transactions from two years to one year;

• Revises section 302–11.420 to reduce the time limit for extensions for settlement of residence transactions from two years to one year;

• Revises section 302–11.421 to reduce the time limit for extensions for settlement of residence transactions from two years to one year;

• Amends part 302–12, subpart A, to establish a requirement for counseling all employees who participate in homesale programs, to update the conditions under which an employee may use the agency's relocation service company contract, and to provide examples of contract terms the employee may be required to agree to;

• Amends part 302–12, subpart B to require that agencies examine and evaluate the objectives and relative costs of their relocation benefits and management processes to determine whether they should have a comprehensive homesale program, and to list the policies and procedures that an agency must have as part of their comprehensive homesale program;

• Corrects the authority citation for part 302–15;

• Revises section 302–15.2 to correct a grammatical error;

• Revises section 302–15.10 to reduce the time limit for agency payment of property management services from two years with the possibility of a 2-year extension to one year with the possibility of a 1-year extension;

• Revises section 302–15.70 to allow for direct payment of property management service fees to the relocating Government employee, when appropriate;

• Amends authority citation for section 302–16; and

• Amends sections 302–16.1 and 302–16.2 by switching the order of the two sections to make a better logical point and by removing the connection between the miscellaneous expense allowance and the establishment and discontinuance of a residence.

Because of the insertion of several new sections in the existing regulation, some existing sections will be redesignated, and therefore, several cross-references will also be changed. This final rule makes those changes.

D. Executive Order 12866

This regulation is excepted from the definition of "regulation" or "rule" under section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under section 6(b) of that Executive Order.

E. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions are not considered substantive. This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553 (a)(2) because it applies to agency management or personnel. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

F. Paperwork Reduction Act

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

G. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Parts 300–3, 300–70, 302–1, 302–2, 302–3, 302–4, 302–5, 302–6, 302–7, 302–9, 302–11, 302–12, 302–15, and 302–16

Government employees, Travel and relocation allowances.

Dated: January 28, 2011.

Martha Johnson,

Administrator of General Services.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5738, GSA amends 41 CFR parts 300–3, 300–70, 302–1, 302–2, 302–3, 302–4, 302–5, 302–6, 302–7, 302–9, 302–11, 301–12, 302–15, and 302–16 as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for 41 CFR part 300–3 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, revised May 22, 1992.

■ 2. Amend § 300–3.1 by—

■ a. Adding, in alphabetical order, the definitions "Accompanied baggage," "Amended value sale," "Appraised value sale," "Buyer value option (BVO)," and "Relocation service company (RSC)";

■ b. Adding paragraph (1)(vii) to the definition of "Household Goods (HHG)"; and

■ c. Revising the definition "Non-foreign area."

The added and revised text reads as follows:

§ 300–3.1 What do the following terms mean?

Accompanied baggage—Government property and personal property of the traveler necessary for official travel.

* * * * *

Amended value sale—Type of home sale transaction that occurs when the relocating employee receives a bona fide offer from a qualified buyer before the employee has accepted an appraised value offer from the relocation services company (RSC). The RSC amends its offer to match the outside sale price. An amended value sale is different from an amended from zero sale because an amended value sale occurs after an appraised value offer while an amended from zero sale occurs before an appraised value offer.

Appraised value sale—Type of home sale transaction that occurs when the relocating employee accepts the offer from the RSC to buy the employee's home based upon the average of a specific number of appraisals conducted by designated certified appraisers.

* * * * *

Buyer value option (BVO)—Type of home sale program with procedures the same as the amended value program, except that the RSC does not initially appraise the employee's home or make a guaranteed buy-out offer. The buy-out offer from the contractor is based on a bona fide offer received by the employee from a qualified buyer after marketing by the employee. Once a bona fide offer is received by the employee, the contractor offers to buy the home from the employee at a price based on the outside sale price.

* * * * *

Household Goods (HHG)—

(1) * * *

(vii) *Unaccompanied Air Baggage (UAB)*—Unaccompanied air baggage includes personal items and equipment (*e.g.,* pots, pans, light housekeeping items, collapsible items such as cribs, playpens, and baby carriages, and other articles required for the care of the family) that may be shipped by air in accordance with Chapter 302 of this Subtitle. Household items (*i.e.,* refrigerators, washing machines, and other major appliances or furniture) are not eligible as UAB.

* * * * *

Non-foreign area—The states of Alaska and Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and the territories and possessions of the United States (excludes the former Trust Territories of the Pacific Islands, which are considered foreign areas for the purposes of the FTR).

* * * * *

Relocation service company (RSC)—A third-party supplier under contract with an agency to assist a transferred employee in relocating to the new official station. Services may include: Homesale programs, home inspection, home marketing assistance, home finding assistance, property management services, shipment and storage of household goods, voucher review and payment, relocation counseling, and similar items.

* * * * *

PART 300–70—AGENCY REPORTING REQUIREMENTS

■ 3. The authority citation for 41 CFR part 300–70 is revised to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

■ 4. Revise §§ 300–70.1 and 300–70.2 to read as follows:

§ 300–70.1 What are the requirements for reporting payments for employee travel and relocation?

Agencies (as defined in § 301–1.1 of this subtitle) that spent more than $5 million on travel and transportation payments, including relocation, during the fiscal year immediately preceding the survey year must report such total agency payments annually, as described in this part:

(a) Specific information on reporting payments for temporary duty travel are in this subpart.

(b) Specific information on reporting payments for employee relocation are in part 302–1 of this subtitle.

§ 300–70.2 What information must we report, and when must we report it?

GSA provides the list of data elements, the report formats, and the due dates in a series of FTR Bulletins. GSA coordinates these FTR Bulletins with the affected agencies and updates them as necessary. FTR Bulletins are available through: *http://www.gsa.gov/ftr.*

PART 302–1—GENERAL RULES

■ 5. The authority citation for 41 CFR part 302–1 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

■ 6. Add subpart B to part 302–1 to read as follows:

Subpart B—Requirement to Report Agency Data for Employee Relocation

Sec.

302–1.100 What is a comprehensive, automated relocation management system?
302–1.101 What actions are agencies expected to take concerning the comprehensive, automated relocation management system?
302–1.102 Are agencies required to report their employee relocation activities to GSA?

Subpart B—Requirement to Report Agency Data for Employee Relocation

§ 302–1.100 What is a comprehensive, automated relocation management system?

A comprehensive, automated relocation management system is a system that integrates into a single, electronic environment, information related to all aspects of employee relocation, including these and similar items:

(a) Authorizations;

(b) Reimbursements to employees and service providers;

(c) Househunting trips;

(d) Travel to the new permanent duty station;

(e) Temporary quarters;

(f) Transportation and storage of property;

(g) Residence transactions;

(h) Use of relocation services companies;

(i) Property management services;

(j) Miscellaneous expenses;

(k) Relocation income taxes and allowances;

(l) Appropriate electronic connections to agency payment and finance processes for all of the above; and

(m) Standard and unique reports for use by agency relocation managers, agency executives, GSA, and others as needed.

§ 302–1.101 What actions are agencies expected to take concerning the comprehensive, automated relocation management system?

Agencies should work toward unifying all aspects of relocation into a comprehensive, automated relocation management system.

§ 302–1.102 Are agencies required to report their employee relocation activities to GSA?

Yes, every agency that spends more than $5 million a year on travel and transportation payments, including relocation, during the fiscal year immediately preceding the survey year, must annually report their employee relocation activities to GSA. GSA works with the agencies to develop and refine the data elements, report format, and due dates for these reports. GSA publishes these specific requirements in a series of FTR Bulletins.

PART 302–2—EMPLOYEE ELIGIBILITY REQUIREMENTS

■ 7. The authority citation for 41 CFR part 302–2 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

■ 8. Revise § 302–2.6 to read as follows:

§ 302–2.6 May I be reimbursed for relocation expenses if I relocate to a new official station that does not meet the 50-mile distance test?

Generally no; you may not be reimbursed for relocation expenses if you relocate to a new official station that does not meet the 50-mile distance test.

(a) The distance test is met when the new official station is at least 50 miles further from the employee's current residence than the old official station is from the same residence. For example, if the old official station is 3 miles from the current residence, then the new official station must be at least 53 miles from that same residence in order to receive relocation expenses for residence transactions. The distance between the official station and residence is the shortest of the commonly traveled routes between them. The distance test does not take into consideration the location of a new residence. This follows the distance guidelines found in *Internal Revenue Service Publication 521, Moving Expenses.*

(b) The head of your agency or designee may authorize an exception to the 50-mile threshold on a case-by-case basis when he/she determines that it is in the best interest of the Government. However, the agency cannot waive the applicability of the IRC; that is, all reimbursed expenses would be taxable income to you, and the agency would have to reimburse those taxes.

(c) Any relocation must be incidental to the transfer and not for the convenience of the employee.

§ 302–2.8 [Amended]

■ 9. Amend § 302–2.8 by removing the words "two years" and adding the words "one year" in its place.

§ 302–2.9 [Amended]

■ 10. Amend § 302–2.9 by removing "2-year" and adding "1-year" in its place.

§ 302–2.10 [Amended]

■ 11. Amend § 302–2.10 by removing "2-year" in both the heading and the text and adding "1-year" in its place.

§ 302–2.11 [Amended]

■ 12. Amend § 302–2.11 by—

■ a. Removing "2-year" in both the heading and the text and adding "1-year" in its place; and

■ b. Removing "2 additional years" and adding the words "one additional year" in its place.

■ 13. Revise the undesignated center heading appearing immediately before § 302–2.12 to read as follows:

Service Agreement and Disclosure Statement

■ 14. Amend § 302–2.12 by adding a sentence at the end of the paragraph to read as follows:

§ 302–2.12 What is a service agreement?

* * * A service agreement must also include the duplicate reimbursement disclosure statement specified in §§ 302–2.20, 302–2.21, and 302–2.100(g).

§§ 302–2.20, 302–2.21, 302–2.22 [Redesignated as §§ 302–2.22, 302–2.23, 302–2.24]

■ 15. Redesignate §§ 302–2.20, 302–2.21, and 302–2.22 as §§ 302–2.22, 302–2.23, and 302–2.24, respectively.

■ 16. Move the undesignated center heading "Advancement of Funds" to precede the newly designated § 302–2.22.

■ 17. Add new §§ 302–2.20 and 302–2.21, to read as follows:

§ 302–2.20 What is a duplicate reimbursement disclosure statement?

A duplicate reimbursement disclosure statement is a written statement signed by you and submitted to your agency. It states that you and/or your immediate family have not accepted, and will not accept, duplicate reimbursement for relocation expenses. Furthermore, it states that, to the best of your knowledge, no third party has accepted duplicate reimbursement for your relocation expenses. The duplicate reimbursement disclosure statement must be incorporated into your service agreement.

§ 302–2.21 Must I sign a duplicate reimbursement disclosure statement?

Yes, you must sign a duplicate reimbursement disclosure statement to receive any relocation benefits.

■ 18. Amend § 302–2.100 by—

■ a. Removing the word "and" at the end of paragraph (e);

■ b. Removing the period at the end of paragraph (f) and adding "; and" in its place; and

■ c. Adding paragraph (g) to read as follows:

§ 302–2.100 What internal policies must we establish before authorizing a relocation allowance?

* * * * *

(g) How you will ensure that all relocating employees sign a duplicate reimbursement disclosure statement, which is to be incorporated into their relocation service agreements (*see* § 302–2.21).

§ 302–2.103 [Amended]

■ 19. Amend § 302–2.103 by—

■ a. Removing the word "and" at the end of paragraph (c);

■ b. Removing the period at the end of paragraph (d) and adding "; and" in its place; and

■ c. Adding paragraph (e) to read as follows:

§ 302–2.103 How must we administer the authorization for relocation of an employee?

* * * * *

(e) Provide counseling about relocation benefits to all relocating employees. In addition, you should offer counseling as early as possible during the relocation process and you should consider offering counseling to

employees who are contemplating acceptance of a job that would require them to relocate.

§ 302–2.110 [Amended]

■ 20. Amend § 302–2.110 by removing "2-year" both times it appears in the introductory text and adding "1-year" in its place.

PART 302–3—RELOCATION ALLOWANCE BY SPECIFIC TYPE

■ 21. The authority citation for 41 CFR part 302–3 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

■ 22. Revise § 302–3.315 to read as follows:

§ 302–3.315 May I be granted an extension to the time limit for beginning my separation travel?

Yes, your agency may grant you or your immediate family member(s) (in case of your death) an extension to the time limit for beginning your separation travel, for up to two years from your effective date of separation or death, if death occurs before separation.

PART 302–4—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

■ 23. The authority citation for 41 CFR part 302–4 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

■ 24. Amend § 302–4.100 by removing "§ 302–4.202" and adding "§§ 302–4.202 and 302–5.13" in its place.

PART 302–5—ALLOWANCE FOR HOUSEHUNTING TRIP EXPENSES

■ 25. The authority citation for 41 CFR part 302–5 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

■ 26. Amend § 302–5.13 by revising the table to read as follows:

§ 302–5.13 What methods may my agency use to reimburse me for househunting trip expenses?

* * * * *

For	You are reimbursed
You and/or your spouse's transportation expenses.	Your actual transportation costs.
You and/or your spouse's subsistence expenses.	One of the following two: (a) A per diem allowance at the standard CONUS rate (*see http://www.gsa.gov/perdiem*), for you and/or your spouse if you travel separately, or if you both travel together, the standard CONUS rate multiplied by 1.75), for the 10 days or less that your agency authorizes for you; or (b) Only if offered by your agency and chosen by you, a lump sum, as follows: (1) If you perform a househunting trip and your spouse does not, or if your spouse performs a househunting trip and you do not, multiply the applicable locality per diem rate by 5.00 (*see http://www.gsa.gov/perdiem*). (2) If you and your spouse both perform a househunting trip, together or separately, multiply the applicable locality per diem rate by 6.25 (*see http://www.gsa.gov/perdiem*).

■ 27. Revise § 302–5.14 to read as follows:

§ 302–5.14 What transportation expenses will my agency pay?

(a) Your agency will authorize you to travel by any transportation mode(s) (*e.g.,* common carrier or POV) that it determines to be advantageous to the Government. Your agency will pay for your transportation expenses by the authorized mode(s). If you travel by one or more mode(s) other than the one(s) authorized by your agency, your agency will pay your transportation expenses up to the constructive cost of transportation by the authorized mode(s). For trips of less than 250 miles, your agency will authorize travel by POV, unless there are reasons for not using a POV that are acceptable to the agency (*e.g.,* traveler is physically impaired, does not own or lease a POV, has only one POV that is used for family transportation, or the POV is not roadworthy for such a trip). POV mileage reimbursement will be in accordance with § 302–4.300 of this chapter.

(b) Unless the agency performs a written cost comparison that demonstrates cost savings, only common carrier may be authorized for trips with a distance of 250 miles or more.

§ 302–5.15 [Amended]

■ 28. Amend § 302–5.15 by removing the words "fixed amount" and adding the words "lump sum" in its place.

§ 302–5.16 [Amended]

■ 29. Amend § 302–5.16 by—

■ a. Removing "§ 302–2.20" and adding "§§ 302–2.22, 302–2.23, and 302–2.24" in its place; and

■ b. Removing the words "fixed amount" and adding the words "lump sum" in its place.

§ 302–5.18 [Amended]

■ 30. Amend § 302–5.18 by—

■ a. Removing the words "fixed amount" from the section heading and adding the words "lump sum" in its place; and

■ b. Removing the word "fixed" and adding the words "lump sum" in its place.

§ 302–5.101 [Amended]

■ 31. Amend § 302–5.101, paragraph (c), by removing the words "fixed amount" and adding the words "lump sum" in its place.

§ 302–5.103 [Redesignated as § 302–5.104]

■ 32. Redesignate § 302–5.103 as § 302–5.104.

■ 33. Add a new § 302–5.103 to read as follows:

§ 302–5.103 What modes of transportation may we authorize for a househunting trip?

(a) When the new official station is less than 250 miles from the old official station, the required mode of transportation is POV, unless there are reasons for not using a POV that are acceptable to the you (*e.g.,* traveler is physically impaired, does not own or lease a POV, has only one POV which is used for family transportation, or the POV is not roadworthy for such a trip). Reimbursement for POV mileage is at the rate prescribed in § 302–4.300 of this subchapter.

(b) When the new official station is 250 miles or more from the old official station, the preferred mode of transportation is common carrier. However, you may authorize the use of POV for a househunting trip longer than 250 miles, provided you complete a written cost comparison in accordance with § 302–5.14(b).

§ 302–5.104 [Amended]

■ 34. Amend the newly redesignated § 302–5.104 by removing the words "Fixed amount" and adding the words "Lump sum" in their place in paragraph (a); and by removing the words "fixed amount" and adding the words "lump sum" in their place each time it appears.

PART 302–6—ALLOWANCE FOR TEMPORARY QUARTERS SUBSISTENCE EXPENSES [AMENDED]

■ 35. The authority citation for 41 CFR part 302–6 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–6.11 [Amended]

■ 36A. Amend § 302–6.11 by removing the words "fixed amount" and adding the words "lump sum" in their place.

§ 302–6.12 [Amended]

■ 36B. Amend § 302–6.12 by removing the words "fixed amount" and adding the words "lump sum" in its place.

§ 302–6.15 [Amended]

■ 37. Amend § 302–6.15 by removing "§ 302–2.20" and adding "§§ 302–2.22, 302–2.23, and 302–2.24" in its place.

■ 38. Revise subpart C to read as follows:

Subpart C—Lump Sum Payment

Sec.
302–6.200 What am I paid under the TQSE lump sum payment method?
302–6.201 How do I determine the amount of my TQSE lump sum payment?
302–6.202 Will I receive additional TQSE reimbursement if my TQSE lump sum payment is not adequate to cover my actual TQSE?
302–6.203 May I retain any balance left over from my TQSE lump sum payment if such payment is more than adequate?
302–6.204 Am I required to file a voucher after occupying temporary quarters if I selected the TQSE lump sum payment?

Subpart C—Lump Sum Payment

§ 302–6.200 What am I paid under the TQSE lump sum payment method?

If your agency offers, and you select the lump sum TQSE payment, you are paid a lump sum for each day authorized up to 30 days. The maximum number of days that may be used for the TQSE lump sum calculation is 30; no extensions are allowed under the lump sum payment method.

§ 302–6.201 How do I determine the amount of my TQSE lump sum payment?

(a) For yourself, multiply the number of days your agency authorizes TQSE by .75 times the maximum per diem rate (that is, lodging plus meals and incidental expenses) prescribed by § 301–11.6 of this subtitle for the locality at the old or new official station or combination thereof, wherever TQ will be occupied. Please note that for non-foreign OCONUS, the Department of Defense Per Diem, Travel and Transportation Allowances Committee establishes the per diem rate, and for foreign OCONUS, the Department of State establishes the per diem rates.

(b) For each member of your immediate family, multiply the same number of days by .25 times the same per diem rate, as described in paragraph (a) of this section.

(c) Your lump sum payment will be the sum of the calculations in paragraphs (a) and (b) of this section.

§ 302–6.202 Will I receive additional TQSE reimbursement if my TQSE lump sum payment is not adequate to cover my actual TQSE?

No, you will not receive additional TQSE reimbursement if the lump sum payment is not adequate to cover your actual TQSE.

§ 302–6.203 May I retain any balance left over from my TQSE lump sum payment if such payment is more than adequate?

Yes, if your lump sum TQSE payment is more than adequate to cover your actual TQSE expenses, any balance belongs to you. (*E.g.,* if your agency authorizes and you accept a lump sum payment for 15 days of TQSE and you vacate TQ after 10 days for any reason, you would retain the remaining balance for the 5 days of TQSE not incurred).

§ 302–6.204 Am I required to file a voucher after occupying temporary quarters if I selected the TQSE lump sum payment?

No, you are not required to file a voucher after occupying temporary quarters if you have selected the lump sum payment. The intent of the lump sum payment is to simplify the process and eliminate the need for filing a voucher. However, your agency may require that you sign a voucher or other document before they pay your lump sum TQSE to you, and your agency may at any time request proof that you actually occupied TQ, even if not for the full length of time on which the lump sum calculation was based. In the absence of sufficient proof of TQSE occupancy, your agency may demand repayment of the TQSE lump sum payment in accordance with § 302–6.305.

§ 302–6.301 [Amended]

■ 39. Amend § 302–6.301, paragraph (c), by removing the words "fixed amount" and adding the words "lump sum" in its place.

■ 40. Revise § 302–6.304 to read as follows:

§ 302–6.304 What factors should we consider in determining whether to offer an employee a lump sum payment option for TQSE?

When determining whether to offer an employee the lump sum payment option for TQSE the following factors should be considered:

(a) *Ease of administration.* A lump sum for TQSE is paid to the employee prior to the occupancy of TQ, and the after the fact voucher process is eliminated under this method. Actual TQSE reimbursement requires an agency to review claims for the validity, accuracy, and reasonableness of each expense amount.

(b) *Cost consideration.* You should weigh the cost of each alternative. Actual TQSE reimbursement may extend up to 120 days, while the lump sum payment is limited to a maximum of 30 days.

(c) *Treatment of employee.* The employee is allowed to choose between actual TQSE reimbursement and the lump sum TQSE payment when you offer the lump sum payment method. You therefore should weigh employee morale and productivity considerations against actual cost considerations in determining which method to offer.

§ 302–6.305 [Redesignated as § 302–6.307]

■ 41. Redesignate § 302–6.305 as § 302–6.307.

■ 42. Add new §§ 302–6.305 and 302–6.306 to read as follows:

§ 302–6.305 Must we require transferees to sign a statement that TQSE will be incurred?

Yes, transferees electing the TQSE lump sum payment option must sign a statement, which should be included as part of the service agreement, asserting that they will occupy TQ and will incur TQSE. If no TQSE are incurred, the transferee must return all monies advanced for the lump sum TQSE payment to the agency.

§ 302–6.306 When must we make the lump sum TQSE payment to the transferee?

You must pay the transferee the lump sum TQSE payment prior to the occupancy of TQ. You should make the lump sum TQSE payment as close as is reasonably possible to the time that the transferee will begin occupancy of TQ.

PART 302–7—TRANSPORTATION AND TEMPORARY STORAGE OF HOUSEHOLD GOODS, PROFESSIONAL BOOKS, PAPERS, AND EQUIPMENT, AND BAGGAGE ALLOWANCE [AMENDED]

■ 43. The authority citation for 41 CFR part 302–7 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–7.1 [Amended]

■ 44. Amend § 302–7.1, paragraph (d), by removing "§ 302–3.304" and adding "§§ 302–3.304 through 302–3.315" in its place.

■ 45. Revise § 302–7.2 to read as follows:

§ 302–7.2 What is the maximum weight of HHG that may be transported or stored at Government expense?

(a) The maximum weight allowance of HHG that may be shipped or stored at Government expense is 18,000 pounds net weight. For uncrated or van line shipments, a 2,000 pound allowance is added to the 18,000 pounds net weight allowance to cover packing materials for the shipment. In no case may a shipment weigh over 20,000 gross pounds (the 18,000 pounds net weight of the uncrated HHG plus the 2,000 pound allowance for packing materials). The relocating employee is responsible for reimbursing the Government for all costs incurred if the shipment is overweight. For determining the weight of crated shipments, containerized shipments, and constructive weight for other types of household good shipments, please *see* the chart in § 302–7.13.

(b) An agency may establish a lower net weight allowance and a lower allowance for packing materials in special circumstances, such as transferring an employee into government-furnished quarters.

■ 46. Revise §§ 302–7.4, 302–7.5, and 302–7.6 to read as follows:

§ 302–7.4 Who pays for shipping professional books, papers, and equipment (PBP&E)?

The agency may pay for shipping PBP&E as a discretionary item. When authorized, shipping PBP&E is considered an administrative cost to the agency. However, for ease of administration in calculating this allowance, PBP&E should be included as part of the HHG shipment, if possible. That is, if the net weight of the HHG plus the PBP&E is less than 18,000 pounds, the agency should ship the items together and pay for the HHG shipment in one payment.

§ 302–7.5 What happens if the HHG shipment includes PBP&E, and it might exceed, or did exceed, the 18,000 pounds net weight allowance?

(a) Separate the PBP&E and have the HHG carrier estimate the weight of the PBP&E before the HHG shipment is picked up. Subtract 110 percent of the estimated PBP&E weight (to adjust for packing materials) from the estimated gross weight as shown on the shipping documents (*i.e.,* net weight minus the PBP&E minus 10 percent of the PBP&E). If the result is more than the 18,000 pounds net weight allowance, then the shipment exceeds the net weight allowance.

(b) If you did not discover that the HHG shipment exceeded the net weight allowance in advance, and if you did not weigh or estimate the PBP&E before shipping it, then weigh the PBP&E before it is delivered. Determine if the shipment exceeds the net weight allowance by applying the formula in paragraph (a) of this section.

(c) If the calculation in paragraph (a) of this section shows that the shipment does not exceed the net weight allowance, then the agency may transport and pay for shipping the PBP&E plus packing materials with the household goods.

(d) However, if the calculation in paragraph (a) of this section shows that the shipment may exceed the net weight allowance, and if the employee was authorized PBP&E, then the employee must pay for shipping all weight that exceeds the net weight allowance for their HHG, minus the PBP&E and packing materials for both. The agency may then pay for shipping the PBP&E as an administrative expense.

(e) The agency may require reasonable documentation of the items requesting to be shipped as PBP&E and the weight of the PBP&E.

§ 302–7.6 What are the authorized origin and destination points for the transportation of HHG and PBP&E?

The authorized origin and destination points for the transportation of HHG and PBP&E vary by category of employee and are listed in the following table:

TRANSPORTATION OF HHG AND PBP&E

Category of employee	Authorized origin/destination
(a) Employee transferred between official stations	Between the old and new official stations (including to/from extended storage location when authorized).
(b) New appointee	From place of actual residence to new official station (including to location of extended storage when authorized).
(c) Employee returning from outside CONUS assignment for separation from Government service.	Last official station and extended storage location, when authorized, to place of actual residence.
(d) Employee authorized separation travel at Government expense to actual residence but retiring at the OCONUS official station or an alternate location.	From any location, including actual residence and extended storage location to any other location (including the OCONUS official station), not to exceed the constructive transportation cost from the official station and extended storage location (respectively) to the actual residence.
(e) SES last move home benefits	From the last official station and extended storage location, when authorized, to the place of selection.
(f) Temporary change of official station (TCS)	From the current official station to the TCS location and return (includes to and from extended storage location when authorized).

§§ 302–7.8 through 302–7.20 [Redesignated as §§ 302–7.9 through 302–7.21]

■ 47. Redesignate §§ 302–7.8 through 302–7.20 as §§ 302–7.9 through 302–7.21, respectively.

■ 48. Add a new § 302–7.8 to read as follows:

§ 302–7.8 At what location can CONUS-to-CONUS or OCONUS-to-CONUS HHG shipments be temporarily stored?

Your HHG may be placed in temporary storage at origin, in transit, at destination, or any combination thereof upon agency approval.

■ 49. Revise newly redesignated § 302–7.9 and § 302–7.10 to read as follows:

§ 302–7.9 What are the time limits for the temporary storage of authorized HHG shipments?

(a) *For CONUS to CONUS shipments.* The initial period of temporary storage at Government expense may not exceed 60 days. You may request additional time, up to a maximum of 90 days, and you must make such a request prior to the expiration of the original 60 days. This extension must be approved by the agency official designated for such requests. Under no circumstances may temporary storage at Government expense for CONUS to CONUS shipments exceed a total of 150 days.

(b) *For shipments that include an OCONUS origin or destination.* The initial period of temporary storage at Government expense may not exceed 90 days. You may request additional time, up to a maximum of 90 days, and you must make such a request prior to the expiration of the original 90 days. This extension must be approved by the agency official designated for such requests. Under no circumstances may temporary storage for shipments at Government expense that include an OCONUS origin or destination exceed a total of 180 days.

§ 302–7.10 What are the reasons that would justify the additional storage beyond the initial 60 days CONUS and 90 days OCONUS limits?

Reasons for justifying temporary storage beyond the initial limit include, but are not limited to:

(a) An intervening temporary duty or long-term training assignment;

(b) Non-availability of suitable housing;

(c) Completion of residence under construction;

(d) Serious illness of employee or illness or death of a dependent; or

(e) Strikes, acts of God, or other circumstances beyond the control of the employee.

§ 302–7.13 [Amended]

■ 50. Amend newly designated § 302–7.13, in the second column of the table, by revising the first entry (opposite entry (a) in the first column), to read "An allowance of up to 2,000 pounds, exclusive of the 18,000 pounds net weight of HHG shipment, is used for the packing weight covering barrels, boxes, cartons, and similar material but does not include pads, chains, dollies and other equipment to load and secure the shipment."

■ 51. Revise newly redesignated § 302–7.16 to read as follows:

§ 302–7.16 Must I use the methods selected by my agency for transportation and temporary storage of my HHG and PBP&E?

No, you do not have to use the method selected (*see* § 302–7.401) by your agency for transportation and temporary storage of your HHG and PBP&E. You may pursue other methods; however, your reimbursement is limited to the actual cost incurred, not to exceed what the Government would have incurred under the method selected by your agency.

■ 52. Revise newly redesignated § 302–7.21 to read as follows:

§ 302–7.21 If my HHG shipment includes an item for which a weight additive is assessed by the HHG carrier (e.g., boat, trailer, ultralight vehicle), am I responsible for payment?

(a) No, you will not be responsible for the shipping charges that result from a weight additive so long as the actual weight of your HHG without the additive does not exceed the 18,000 pound net weight allowance for relocation. However you are responsible for any amount your HHG exceeds the 18,000 pound net weight allowance prior to the addition of the weight additive (*e.g.,* when a weight additive of 700 pounds is imposed by a HHG carrier for a 65-pound canoe and the total net weight of the HHG, including the weight additive, is 18,765 pounds, you are only responsible for the 65 pounds actually added by the canoe).

(b) You are also responsible for the cost of special packing, crating, and handling of the weight additive items, if any. *See* § 302–7.200 on how charges are paid and who makes the shipping arrangements.

Subpart D [Redesignated as Subpart E]

■ 53. Redesignate subpart D consisting of §§ 302–7.300 through 302–7.304 as new subpart E consisting of §§ 302–7.400 through 302–7.404.

■ 54. Add a new subpart D consisting of §§ 302–7.300 through 302–7.305 to read as follows:

Subpart D—Baggage Allowance

Sec.
302–7.300 When may I be authorized an unaccompanied air baggage (UAB) shipment?
302–7.301 Is my UAB shipment in addition to the 18,000 pounds net weight of the HHG weight allowance?
302–7.302 What is the maximum weight allowance for a UAB shipment?
302–7.303 When may my agency authorize the shipment of UAB by expedited means?
302–7.304 Who makes arrangements for transporting my UAB?
302–7.305 When must my agency ship my UAB?

Subpart D—Baggage Allowance

§ 302–7.300 When may I be authorized an unaccompanied air baggage (UAB) shipment?

UAB is used in connection with permanent change of station OCONUS, renewal agreement travel, and temporary change of station. You may be authorized a UAB shipment prior to transferring from a CONUS location to an OCONUS location, between OCONUS locations, or from an OCONUS location to a CONUS location. UAB for CONUS to CONUS shipments is not allowed under the FTR.

§ 302–7.301 Is my UAB shipment in addition to the 18,000 pounds net weight of the HHG weight allowance?

No, for all shipments made under the authority of the FTR, the UAB shipment is part of, not in addition to, the 18,000 pounds net weight allowance for HHG.

§ 302–7.302 What is the maximum weight allowance for a UAB shipment?

The maximum weight allowance your agency may grant for a UAB shipment is—

(a) Up to 350 pounds actual weight (including the weight of the luggage or packing material) for the employee and each immediate family member 12 years of age and over; or

(b) Up to 175 pounds actual weight (including the weight of the luggage or packing material) for each immediate family member under 12 years of age.

§ 302–7.303 When may my agency authorize the shipment of UAB by expedited means?

Your agency may authorize the shipment of UAB by expedited means when:

(a) Shipment by a lower cost mode cannot deliver the items being shipped by the time they will be needed by the employee and/or the employee's immediate family; or

(b) You certify that expedited shipment of your UAB is necessary to carry out your assigned duties; or

(c) Your agency determines that an expedited shipment is necessary to prevent undue hardship to you and members of your immediate family.

§ 302–7.304 Who makes arrangements for transporting my UAB?

Your agency or your agency's designee should arrange for the transport of your UAB. In limited situations, the agency may ask the employee to make the arrangements for a UAB shipment.

§ 302–7.305 When must my agency ship my UAB?

Your agency must ship your UAB in time to ensure that your shipment arrives by the time you (and/or your family) report to your new official station. Arrangements should begin prior to your and/or your family's departure to your new official station.

■ 55. Revise newly designated subpart E to read as follows:

Subpart E—Agency Responsibilities

Sec.
302–7.400 What policies and procedures must we establish for this subpart?
302–7.401 What method of transportation and payment should we authorize for shipment and temporary storage of HHG?
302–7.402 What method of transportation and payment should we authorize for shipment of PBP&E and UAB?
302–7.403 What guidelines must we follow when authorizing transportation of PBP&E as an administrative expense?
302–7.404 Are separate weight certificates required when HHG are shipped under the actual expense method and PBP&E are shipped as an administrative expense in the same lot?
302–7.405 How must we arrange and pay for transportation of HHG and UAB, if we have authorized actual expense for transportation?

Subpart E—Agency Responsibilities

Note to Subpart E: Use of pronouns "we," "you," and their variants throughout this Subpart refers to the agency.

§ 302–7.400 What policies and procedures must we establish for this subpart?

You must establish policies and procedures as required for this subpart, including who will:

(a) Administer your household goods program;

(b) Authorize commuted rate or actual expense for transportation and payment for HHG, PBP&E, and temporary storage;

(c) Authorize PBP&E to be transported as an agency administrative expense in accordance with FTR guidelines (usually the authorizing official for PBP&E will be at the employee's new official station);

(d) Authorize an employee to ship UAB;

(e) Collect any excess costs or charges;

(f) Advise the employee on the Government's liability for any personal property damage or loss claims (*See* 31 U.S.C. 3721, *et seq.*);

(g) Ensure that international HHG shipments by water are made on ships registered under the laws of the United States whenever such ships are available (*see* The Cargo Preference Act of 1904 (10 U.S.C. 2631) and The Cargo Preference Act of 1954 (46 U.S.C. 55302));

(h) Authorize temporary storage in excess of the initial 60-day limit for CONUS shipments or 90-day limit for OCONUS shipments; and

(i) Ensure pre-payment audits are completed.

§ 302–7.401 What method of transportation and payment should we authorize for shipment and temporary storage of HHG?

There are two methods of arranging and paying for shipment of HHG and providing for temporary storage: actual expense and commuted rate. You must authorize actual expense or commuted rate, depending on which is less costly to the Government. You must then specify the selected method on the relocation travel authorization.

(a) *Actual expense method.* Under the actual expense method, the Government assumes the responsibility for arranging and paying for the actual expenses of all aspects of shipping the employee's HHG, including PBP&E, if any. These expenses may include but are not limited to: Packing/unpacking, crating/uncrating, pickup/delivery, weighing, line-haul, drayage, and temporary storage. This method is used for all shipments to/from/between OCONUS, and within CONUS where deemed economical to the Government.

(b) *Commuted rate system.*

(1) Under the commuted rate system, the employee assumes total responsibility for arranging and paying for the expenses of all aspects of shipping the employee's HHG, including PBP&E, if any. These expenses may include but are not limited to: Packing/unpacking, crating/uncrating, pickup/delivery, weighing, line-haul, drayage, and temporary storage. This method is used only for shipments within CONUS, and only where it is less costly to the Government than actual expense. The employee may arrange for shipment with a commercial HHG carrier or may rent self-drive equipment for a do-it-yourself move.

(2) The commuted rate is calculated based on published HHG tariffs applied to the actual weight of the goods being shipped (subject also to the weight limitation in §§ 302–7.2 through 302–7.5).

(3) If a PBP&E shipment causes the weight of a shipment under the commuted rate method to exceed the 18,000 pounds net weight allowance for HHG, then the actual cost of shipping that excess weight attributed to the PBP&E may be paid as an administrative expense of the agency. In this case, all related transportation arrangements (*e.g.,* packing/unpacking, crating/uncrating, pickup/delivery, weighing, temporary storage, etc.) associated with shipping this excess weight will be handled and paid for by the agency (*see* § 302–7.5 for the process of determining what will paid for by the agency).

§ 302–7.402 What method of transportation and payment should we authorize for shipment of PBP&E and UAB?

(a) You should authorize the actual expense method for shipping an employee's PBP&E only when the weight of the PBP&E causes the employee's shipment to exceed the maximum 18,000 pounds net HHG weight limitation and in accordance with § 302–7.403. Preferably, PBP&E should be identified and weighed prior to shipment, so the weight can easily be deducted from the 18,000 pounds net weight allowance. In cases where the weight of the PBP&E causes the shipment to exceed the 18,000 pounds net weight allowance for HHG, the PBP&E shipment may be paid for as an administrative expense by you, provided you authorized PBP&E.

(b) You should authorize the actual expense method for shipping an employee's UAB. UAB should be identified, weighed, and shipped prior to shipment of HHG. In cases where the weight of the UAB causes the shipment to exceed the 18,000 pounds net weight allowance for HHG, the cost of the excess weight is the responsibility of the employee. Under the actual expense method of shipment, you are responsible for paying the bill of lading in full and then collecting any excess cost from the employee.

§ 302–7.403 What guidelines must we follow when authorizing transportation of PBP&E as an administrative expense?

You have the sole discretion to authorize transportation of PBP&E as an administrative expense and may do so provided that:

(a) The authorizing official has certified that the PBP&E is necessary for performance of the employee's duties at the new duty station;

(b) The authorizing official has certified that, if these items were not transported, the same or similar items would have to be obtained at Government expense for the employee's use at the new official station;

(c) You have acquired evidence that transporting the PBP&E would cause the employees' HHG to exceed the 18,000 pounds net weight allowance; and

(d) If you have requested it, the employee has provided reasonable documentation of the items requesting to be shipped as PBP&E and the weight of the PBP&E for review by the authorizing official (who is usually an official at the employee's new official station).

Note to § 302–7.403: PBP&E transported as an agency administrative expense to an OCONUS location may be returned to CONUS as an agency administrative expense for an employee separating from Government service or returning to the actual place of residence and continuing in Government service.

§ 302–7.404 Are separate weight certificates required when HHG are shipped under the actual expense method and PBP&E are shipped as an administrative expense in the same lot?

Yes, separate weight certificates are required when the PBP&E and its packing allowance pushes the shipment over the net weight allowance. Otherwise, for administrative efficiency, the HHG shipment should be billed and paid for as a single shipment. If separate weight certificates are required, then the weight of PBP&E and the administrative appropriation chargeable must be listed as separate items on the bill of lading or other shipping document.

§ 302–7.405 How must we arrange and pay for transportation of HHG and UAB, if we have authorized actual expense for transportation?

When arranging transportation of HHG and UAB under the actual expense method, you should:

(a) Determine the constructive cost of transporting the HHG plus the UAB, as follows:

(1) Compute the cost of transporting the HHG (not including the UAB) in one lot, by the most economical means; be sure to include the cost of packing and unpacking.

(2) Compute the cost of transporting the UAB.

(3) If the HHG, including the UAB, exceeds the 18,000 pounds net weight allowance, then compute the cost of transporting only the net weight allowance as one shipment; again, be sure to include the cost of packing and unpacking.

(4) The constructive cost is either that described in paragraph (a)(3) of this section or the sum of paragraphs (a)(1) and (a)(2) of this section, depending on whether the weight of the HHG, including the UAB, exceeds the net weight allowance.

(b) Limit the employee's HHG plus UAB transportation payment to the constructive cost as described in paragraph (a)(4) of this section, so long as it is equal to or less than the 18,000 pound net limit of this Chapter;

(c) Make arrangements for transporting the employee's HHG and UAB under two separate bills of lading, with direct payment by the agency for both; and

(d) Advise employees of this relocation entitlement limitation and its potential to result in out-of-pocket expenses to the employee. That is, advise employees that they will have to use their personal funds to pay for transporting HHG (including UAB) in excess of 18,000 pounds net weight allowance.

PART 302–9—ALLOWANCES FOR TRANSPORTATION AND EMERGENCY STORAGE OF A PRIVATELY OWNED VEHICLE

■ 56. The authority citation for 41 CFR part 302–9 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–9.11 [Amended]

■ 57. Amend § 302–9.11 by removing "§ 302–2.20" and adding "§ 302–2.22" in its place.

§ 302–9.140 [Amended]

■ 58. Amend § 302–9.140, paragraph (a), by removing "§ 302–9.503" and adding "§ 302–9.504" in its place.

§ 302–9.170 [Amended]

■ 59. Amend § 302–9.170, paragraph (d), by removing "302–9.503" and adding "§ 302–9.504" in its place.

■ 60. Amend § 302–9.301 by—

■ a. Removing the word "and" at the end of paragraph (b);

■ b. Removing the period at the end of paragraph (c) and adding ";" in its place; and

■ c. Adding paragraphs (d) and (e) to read as follows:

§ 302–9.301 Under what conditions may my agency authorize transportation of my POV within CONUS?

* * * * *

(d) Your agency determines that the POV is in operating order and legally titled and tagged for driving; and

(e) The distance that the POV is to be shipped is 600 miles or more.

■ 61. Revise § 302–9.302 to read as follows:

§ 302–9.302 How many POV's may I be authorized to transport within CONUS?

You may be authorized to transport only the number of POVs equal to the number of people on the relocation travel orders, who are licensed drivers, not to exceed two, while relocating within CONUS at Government expense under this Chapter. Your agency must determine that such transportation is advantageous and cost effective to the Government in accordance with § 302–9.301. A vehicle may not be shipped as PBP&E.

§§ 302–9.501 through 302–9.505 [Redesignated as §§ 302–9.502 through 302–9.506]

■ 62. Redesignate §§ 302–9.501 through 302–9.505 as §§ 302–9.502 through 302–9.506, respectively.

■ 63. Add a new § 302–9.501 to read as follows:

§ 302–9.501 How many POV's may we authorize for transportation at Government expense?

Within CONUS, you may authorize transportation of up to two POVs at Government expense, as prescribed in § 302–9.302. For shipments from CONUS to OCONUS, OCONUS to OCONUS, and OCONUS to CONUS, only one POV may be transported at Government expense.

§ 302–9.504 [Amended]

■ 64. Amend newly designated § 302–9.504 by removing "§ 302–9.504" and adding "§ 302–9.505" in its place.

■ 65. Amend the newly designated § 302–9.505 by—

■ a. Removing the word "and" at the end of paragraph (c);

■ b. Removing the period at the end of paragraph (d) and adding "; and" in its place; and

■ c. Adding paragraph (e) to read as follows:

§ 302–9.505 What factors must we consider in deciding whether to authorize transportation of a POV to a post of duty?

* * * * *

(e) The POV is in operating order and legally titled and tagged for driving.

■ 66. Amend newly designated § 302–9.506 by:

■ a. Removing the period at the end of paragraph (d) and adding "; and" in its place; and

■ b. Adding paragraphs (e) and (f) to read as follows:

§ 302–9.506 What must we consider in determining whether transportation of a POV within CONUS is cost effective?

* * * * *

(e) The POV is in operating order and legally titled and tagged for driving; and

(f) The distance that the POV is to be shipped is greater than 600 miles.

PART 302–11—ALLOWANCES FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

■ 67. The authority citation for 41 CFR part 302–11 continues to read as follows:

Authority: 5 U.S.C. 5738 and 20 U.S.C. 905(c).

■ 68. Revise § 302–11.2 to read as follows:

§ 302–11.2 Am I eligible to receive an allowance for expenses incurred in connection with my residence transactions?

(a) You must meet four basic conditions to be eligible to receive an allowance for expenses incurred in connection with your residence transactions:

(1) You must be transferring from one official station to another;

(2) Your relocation must be incidental to the transfer (*i.e.*, not for the convenience of the employee);

(3) Your relocation must meet the distance test conditions of § 302–2.6; and

(4) Your new official station must be within the United States.

(b) If you previously transferred from an official station in the United States to a foreign area and you are now transferring back to the United States, then, in addition to the requirements of paragraph (a) of this section, you must have completed the time period specified in your service agreement for your overseas tour of duty.

§ 302–11.21 [Amended]

■ 69. Amend § 302–11.21, in the second sentence, by removing "2 years" and adding "1 year" in its place.

■ 70. Revise § 302–11.22 to read as follows:

§ 302–11.22 May the 1-year time limitation be extended by my agency?

Yes, your agency may extend the 1-year limitation for up to one additional year for reasons beyond your control and acceptable to your agency.

■ 71. Amend § 302–11.200 by revising the introductory text to read as follows:

§ 302–11.200 What residence transaction expenses will my agency pay?

Provided the residence transaction expenses are customarily charged to the seller of a residence in the locality of the old official station or paid by the purchaser at the new official station, your agency will, with appropriate supporting documentation provided by you, reimburse you for the following residence transaction expenses when they are incurred by you incident to your relocation:

* * * * *

§ 302–11.404 [Amended]

■ 72. Amend § 302–11.404, paragraph (c), by removing "2-year" and adding "1-year" in its place.

§ 302–11.420 [Amended]

■ 73. Amend § 302–11.420 by removing "2 years" and adding "1 year" in its place.

§ 302–11.421 [Amended]

■ 74. Amend § 302–11.421, paragraph (a), by removing "two years" and adding "one year" in its place.

PART 302–12—USE OF A RELOCATION SERVICES COMPANY (RSC)

■ 75. The authority citation for 41 CFR part 302–12 continues to read as follows:

Authority: 5 U.S.C. 5738 and 20 U.S.C. 905(c).

■ 76. Revise §§ 302–12.1 through 302–12.3 to read as follows:

§ 302–12.1 Who determines if I may use a RSC?

Your agency determines whether you may use a RSC and chooses which RSC you may use.

§ 302–12.2 Under what conditions may I participate in my agency's homesale program?

You may participate in your agency's homesale program, through its RSC contract, blanket purchase agreement, task order, or other formal arrangement (for the remainder of this part, all of these will be referred to as the contract with the RSC) provided you meet all of the following conditions:

(a) You are authorized to relocate;

(b) Your relocation includes at least one residence transaction;

(c) You have signed a relocation service agreement;

(d) Your agency authorizes you to use a RSC with which your agency has a contract;

(e) Your residence is within RSC contract scope for type, size, condition, and other contractual requirements;

(f) You meet all conditions established by this Chapter for the services that the RSC will provide to you; and

(g) You have signed an agreement with your agency to enter the agency's homesale program and to abide by all terms of the agency's contract with the RSC (*see* § 302–12.4 for contract term examples).

§ 302–12.3 Am I required to participate in homesale counseling?

Yes, you are required to participate in homesale counseling if you are going to use the RSC. The RSC and/or your agency must provide counseling to help you understand the process, select a broker, prepare your home for sale, identify an appropriate selling price, set realistic expectations, etc. This counseling may be in person or via an electronic medium, at your agency's discretion. Your agency should also provide you with relocation information/counseling prior to you making any decisions to relocate.

§§ 302–12.4 through 302–12.9 [Redesignated as §§ 302–12.5 through 302–12.10]

■ 77. Redesignate §§ 302–12.4 through 302–12.9 as §§ 302–12.5 through 302–12.10.

■ 78. Add a new § 302–12.4 to read as follows:

§ 302–12.4 To what terms of the RSC contract am I required to agree?

Your agency determines the contract terms to which you will be required to agree. Examples of these contract terms may include, but are not limited to, the following:

(a) You will participate in counseling provided by the RSC;

(b) You will seriously consider any bona fide offer that you receive during the minimum marketing period;

(c) As a precondition of using its relocation services, you will complete and submit a disclosure form to the RSC to provide thorough information about the age and condition of your home and its systems.

■ 79A. Revise §§ 302–12.105 and 302–12.106 to read as follows:

§ 302–12.105 Must we have a contract with a RSC that includes a comprehensive homesale program?

No, you are not required to have a contract that includes a comprehensive homesale program (which, for this purpose, is defined as a relocation program that includes a contract with a RSC that provides for buyer value option sales, amended sales, and appraised value purchases by the RSC).

However, if you do not have such a program, you must examine and evaluate the objectives and relative costs of your relocation benefits and management processes at least once every two years to determine whether a comprehensive homesale program should be part of your relocation program.

§ 302–12.106 What rules must we follow when contracting for a comprehensive homesale program?

You must follow the rules contained in the Federal Acquisition Regulations (FAR) (48 CFR) and/or all other acquisition regulations applicable to your agency.

§ 302–12.107 [Removed and Reserved]

■ 79B. Remove and reserve § 302–12.107.

§§ 302–12.108 through 302–12.114 [Redesignated as §§ 302–12.115 through 302–12.121]

■ 80. Redesignate §§ 302–12.108 through 302–12.114 as §§ 302–12.115 through 302–12.121.

■ 81A. Add and reserve § 302–12.108 to read as follows:

§ 302–12.108 [Reserved]

■ 81B. Add new §§ 302–12.109 to read as follows:

§ 302–12.109 May we require employees to participate in counseling before listing their homes?

Yes, you may require that employees participate in counseling before listing their homes, provided this is written into your agency's relocation policy. This is a common practice in the private sector. Please note, however, that this may exclude from your homesale program any employee who lists his/her home before the relocation travel authorization is approved. If you choose to make this part of your agency policy, you should make a major, ongoing effort to inform as many of your potential transferees as possible of this policy.

■ 81C. Add and reserve § 302–12.110 to read as follows:

§ 302–12.110 [Reserved]

■ 81D. Add new §§ 302–12.111 through 302–12.114 to read as follows:

§ 302–12.111 May we require an employee to use a real estate broker specified by the RSC?

Yes, you may require, through your contract with the RSC, that every employee enrolled in the homesale program use a real estate broker specified by the RSC. This provision is not part of the standard terms for a homesale program, but it may provide a pricing advantage in negotiations with potential RSC, as well as an opportunity for better management of the homesale process.

§ 302–12.112 May we require an employee to use a mortgage service provider specified by the RSC?

No. Under the Real Estate Procedures Settlement Act (RESPA), you may not require that the employee obtain any mortgage from a lender specified by the RSC. The RSC may provide the employee access to multiple mortgage service providers as long as there is no use requirement, and the employee is provided a choice. Allowing the RSC to provide access to multiple providers is not part of the standard terms for a homesale program, but it may provide a pricing advantage in negotiations with potential RSCs, as well as an opportunity for better management of the homesale process.

§ 302–12.113 What must we do when planning, establishing, and administering a RSC contract?

(a) When planning and establishing a RSC contract, you must structure the contract so that it provides the best possible value to the Government, considering costs, tax implications, morale, mobility, employee choice, productivity, and any other relevant considerations. For most agencies and most relocations, this structure will include the possibility of a BVO sale or an amended value sale.

(b) Once you have a RSC contract, you must monitor costs and tax consequences and make adjustments as necessary, to ensure that your homesale program continues to provide the same best value to the Government.

§ 302–12.114 What policies must we establish when offering our employees the services of a RSC?

If you choose to offer the services of a RSC to your employees, you must establish policies governing:

(a) The conditions under which you will authorize an employee to use the contract with the RSC;

(b) Which employees you will allow to use the contract with the RSC;

(c) Which services the RSC will provide to the employee;

(d) Who will determine in each case if an employee may use the contract with the RSC and which services the RSC will provide;

(e) How you will monitor and evaluate the counseling provided by you and/or the RSC to your employees; and

(f) How you will monitor and maintain an appropriate balance between the three types of homesale transactions in your homesale programs (appraised value, buyer value option, and amended value).

PART 302–15—ALLOWANCE FOR PROPERTY MANAGEMENT SERVICES

■ 82. The authority citation for 41 CFR part 302–15 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

■ 83. Revise § 302–15.2 to read as follows:

§ 302–15.2 What are the purposes of the property management services allowance?

The purposes of the property management services allowance are to:

(a) Reduce overall Government relocation costs by using the property management services allowance in place of allowances for the sale of the employee's residence; and

(b) Relieve employees transferred to OCONUS duty stations from the costs of maintaining a home in CONUS during their tour of duty.

§ 302–15.10 [Amended]

■ 84. Amend § 302–15.10, paragraph (a), by—

■ a. Removing "2 years" and adding "one year" in its place; and

■ b. Removing "2-year" and adding "1-year" in its place.

■ 85. Revise § 302–15.70 to read as follows:

§ 302–15.70 What governing policies must we establish for the allowance for property management services?

You must establish policies and procedures governing:

(a) When you will authorize payment for property management services for an employee who transfers in the interest of the Government;

(b) When it is appropriate to authorize this service on a reimbursable basis to the employee, rather than paying the property management company directly, as long as any reimbursement is equal to or less than the agency negotiated rate for this service (agencies may require that employees hire only licensed and/or certified property managers).

(c) Who will determine, for relocations to official duty stations in the United States, whether payment for property management services is more advantageous and cost effective than sale of an employee's residence at Government expense;

(d) If and when you will allow an employee who was offered and accepted payment for property management services to change his/her residence at Government expense in accordance with paragraph (e) of this section; and

(e) How you will offset expenses you have paid for property management services against payable expenses for sale of the employee's residence when an eligible employee who elected payment for property management services later changes his/her mind and elects instead to sell his/her residence at Government expense.

PART 302–16—ALLOWANCE FOR MISCELLANEOUS EXPENSES

■ 86. The authority citation for 41 CFR part 302–16 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

§§ 302–16.1 and 302–16.2 [Redesignated as §§ 302–16.2 and 302–16.1]

■ 87. Redesignate §§ 302–16.1 and 302–16.2 as §§ 302–16.2 and 302–16.1, respectively.

■ 88. Revise newly redesignated §§ 302–16.1 and 302–16.2 to read as follows:

§ 302–16.1 What is the purpose of the miscellaneous expenses allowance (MEA)?

The miscellaneous expenses allowance (MEA) is intended to help defray some of the costs incurred due to relocating. (*See* part 302–10 of this chapter for specific costs normally associated with relocation of a mobile home dwelling that are covered under transportation expenses.)

§ 302–16.2 What are miscellaneous expenses?

Miscellaneous expenses are:

(a) Costs associated with relocating that are not covered by other relocation benefits detailed in Chapter 302.

(b) Expenses allowable under this section include but are not limited to the following, and similar, items:

General expenses	Fees/deposits	Losses
Appliances	Fees for disconnecting/connecting utilities, appliances, equipment, or conversion of appliances for operation on available utilities.	
Rugs, draperies, and curtains	Fees for cutting and fitting such items when they are moved from one residence quarters to another.	
Utilities (For mobile homes, *see* § 302–10.204).	Deposits or fees not offset by eventual refunds.	
Medical, dental, and food locker contracts.		Losses that cannot be recovered by transfer or refund and are incurred due to early termination of a contract.
Private Institutional care contracts (such as that provided for handicapped or invalid dependents only).		Losses that cannot be recovered by transfer or refund and are incurred due to early termination of a contract.
Privately-owned vehicles	Registration, driver's license, and use taxes imposed when bringing vehicles into certain jurisdictions.	
Transportation of pets	The only costs included are those normally associated with the transportation and handling of dogs, cats, and other house pets, as well as costs due to stringent air carrier rules. Other animals (horses, fish, birds, reptiles, various rodents, etc.) are excluded because of their size, exotic nature, restrictions on shipping, host country restrictions, and special handling difficulties. Inoculations, examinations, and boarding quarantine costs are excluded.	

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Friday, April 1, 2011

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FEDERAL REGISTER PAGES AND DATE, APRIL

18001–18346..... 1

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H.J. Res. 48/P.L. 112–6
Additional Continuing Appropriations Amendments, 2011 (Mar. 18, 2011; 125 Stat. 23)
Last List March 7, 2011

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
April 1	Apr 18	Apr 22	May 2	May 6	May 16	May 31	Jun 30
April 4	Apr 19	Apr 25	May 4	May 9	May 19	Jun 3	Jul 5
April 5	Apr 20	Apr 26	May 5	May 10	May 20	Jun 6	Jul 5
April 6	Apr 21	Apr 27	May 6	May 11	May 23	Jun 6	Jul 5
April 7	Apr 22	Apr 28	May 9	May 12	May 23	Jun 6	Jul 6
April 8	Apr 25	Apr 29	May 9	May 13	May 23	Jun 7	Jul 7
April 11	Apr 26	May 2	May 11	May 16	May 26	Jun 10	Jul 11
April 12	Apr 27	May 3	May 12	May 17	May 27	Jun 13	Jul 11
April 13	Apr 28	May 4	May 13	May 18	May 31	Jun 13	Jul 12
April 14	Apr 29	May 5	May 16	May 19	May 31	Jun 13	Jul 13
April 15	May 2	May 6	May 16	May 20	May 31	Jun 14	Jul 14
April 18	May 3	May 9	May 18	May 23	Jun 2	Jun 17	Jul 18
April 19	May 4	May 10	May 19	May 24	Jun 3	Jun 20	Jul 18
April 20	May 5	May 11	May 20	May 25	Jun 6	Jun 20	Jul 19
April 21	May 6	May 12	May 23	May 26	Jun 6	Jun 20	Jul 20
April 22	May 9	May 13	May 23	May 27	Jun 6	Jun 21	Jul 21
April 25	May 10	May 16	May 25	May 31	Jun 9	Jun 24	Jul 25
April 26	May 11	May 17	May 26	May 31	Jun 10	Jun 27	Jul 25
April 27	May 12	May 18	May 27	Jun 1	Jun 13	Jun 27	Jul 26
April 28	May 13	May 19	May 31	Jun 2	Jun 13	Jun 27	Jul 27
April 29	May 16	May 20	May 31	Jun 3	Jun 13	Jun 28	Jul 28