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# Rules and Regulations

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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 THE TREASURY

### Internal Revenue Service

### 26 CFR Part 300

**[TD 9523]**

**RIN 1545–BJ65**

## User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains amendments to the regulations relating to the imposition of user fees for enrolled agents and enrolled retirement plan agents. The final regulations lower the initial enrollment and renewal of enrollment user fees for enrolled agents and enrolled retirement plan agents and separate the enrolled retirement plan agent user fees from the enrolled agent user fees. The final regulations affect individuals who are, or apply to become, enrolled agents or enrolled retirement plan agents.

**DATES:** *Effective Date:* These regulations are effective on April 19, 2011.

*Applicability Date:* For dates of applicability see §§ 300.5(d), 300.6(d), 300.9(d), 300.10(d), and 300.11(d).

**FOR FURTHER INFORMATION CONTACT:** Concerning the final regulations, Emily M. Lesniak at (202) 622–4570, or concerning cost methodology, Eva J. Williams at (202) 435–5514 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains final regulations relating to the initial enrollment and renewal of enrollment for enrolled agents and enrolled retirement plan agents. The Independent Offices Appropriations Act of 1952, which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations establishing user fees for services provided by the agency. Regulations prescribing user fees are subject to the policies of the President, which are currently set forth in the Office of Management and Budget Circular A–25 (the OMB Circular), 58 FR 38142 (July 15, 1993).

The OMB Circular requires agencies seeking to impose user fees for providing special benefits to identifiable recipients to calculate the full cost of providing those benefits.

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Section 10.4 of Circular 230 authorizes the Commissioner of Internal Revenue to grant status as an enrolled agent or enrolled retirement plan agent to applicants who demonstrate special competence in tax matters.

To become an enrolled agent or enrolled retirement plan agent, an applicant generally must pass a special enrollment examination and file an application for enrollment with the IRS. An individual granted status as an enrolled agent or enrolled retirement plan agent as provided in § 10.6(d) of Circular 230 must renew enrollment every three years to maintain active enrollment and be able to practice before the IRS.

On December 10, 2010, the Treasury Department and the IRS published in the **Federal Register** (75 FR 76940) a notice of proposed rulemaking proposing amendments to part 300 of title 26 of the Code of Federal Regulations. The regulations proposed to reduce the initial enrollment and renewal of enrollment user fees for enrolled agents and enrolled retirement plan agents to $30 from $125. The reduction in user fees is necessary to account for the reallocation of portions of the enrolled agent and enrolled retirement plan agent renewal processes to the preparer tax identification number (PTIN) application and renewal process. The costs to the government for the reallocated portions of the enrolled agent and enrolled retirement plan agents initial enrollment and renewal of enrollment processes are now recovered by the user fee to apply for or renew a PTIN (TD 9503, 75 FR 60316). Additionally, these regulations proposed to separate the enrolled retirement plan agent user fees from the enrolled agent user fees.

A public hearing was scheduled for January 14, 2011. The IRS did not receive any requests to testify at the public hearing, and the hearing was cancelled.

The IRS received written comments in response to the proposed regulations. After careful consideration of the public comments, the Treasury Department and the IRS decided to adopt without substantive modification the proposed regulations reducing the enrolled agent and enrolled retirement plan agent initial enrollment and renewal of enrollment user fees to $30 and separating the enrolled retirement plan agent user fees from the enrolled agent user fees.

### Summary of Comments

The IRS received five comments in response to the notice of proposed rulemaking. The comments were considered and are available for public inspection at *http://www.regulations.gov* or upon request. The comments related to the reduced enrolled agent user fees; Announcement 2010–81 (2010–45 IRB 638), which delayed the renewal period for enrolled agents whose social security or tax identification number ends in 4, 5, or 6; the recently published final regulations under section 6109 (TD 9501, 75 FR 60309), which require tax return preparers who prepare all or substantially all of a tax return or claim for refund for compensation to have a PTIN; the final regulations implementing a $50 user fee to the IRS to apply for or renew a PTIN; and the proposed amendments to Circular 230 (75 FR 51713). The IRS did not receive any comments regarding the separation of the enrolled retirement plan agent user fees from the enrolled agent user fees.

The comments relating to the proposed regulations reducing the enrolled agent and enrolled retirement plan agent user fees are summarized in this preamble. To the extent that the comments raised issues regarding other Treasury Department guidance, the Treasury Department and the IRS have

considered or will consider the comments in connection with the relevant guidance.

The IRS received two comments regarding the amount of the user fees in the proposed regulations. One comment supported reducing the initial enrollment and renewal of enrollment user fees for enrolled agents to $30. Another comment requested that the reduction in the user fee to renew enrollment as an enrolled agent be made retroactive.

The Treasury Department and the IRS took steps to prevent duplication of costs for enrolled agents whose enrollment renewal period was scheduled to begin after the effective date of the user fee to apply for or renew of PTIN, but before the enrolled agent user fees are reduced. As previously discussed, the enrolled agent and enrolled retirement plan agent user fees are being reduced to account for the reallocation of part of the enrollment processes to the PTIN application and renewal process. On October 14, 2010, the Treasury Department and the IRS issued Announcement 2010–81, which delayed the renewal period for enrolled agents who were scheduled to renew their enrollment between November 1, 2010, and January 31, 2011. Thus, the Announcement delayed the renewal period for those enrolled agents required to both renew their enrollment and obtain a PTIN between September 28, 2010 and January 31, 2011 until guidance reducing the renewal of enrollment user fees could be finalized.

Further, the OMB Circular provides that Federal agencies should recover the full cost of providing a special benefit to an identifiable recipient. Designation as an enrolled agent is a special benefit that is conferred upon a specific individual, and under the OMB Circular, the IRS should recover the full cost of providing this benefit. Prior to the implementation of the user fee to apply for or renew a PTIN, the cost to the government to process an initial enrollment or renewal of enrollment application for an enrolled agent or enrolled retirement plan agent was $125. Thus, the reduced $30 user fee would not recover the entire cost to the government to process applications submitted before the effective date of the regulations implementing the user fee to apply for or renew a PTIN.

After considering the public comments, the Treasury Department and the IRS have decided to adopt the proposed regulations without substantive modification.

**Effective/Applicability Date**

The Administrative Procedure Act provides that substantive rules will not be effective until thirty days after the final regulations are published in the **Federal Register** (5 U.S.C. 553(d)). Final regulations may be effective prior to thirty days after publication if the publishing agency finds that there is good cause for an earlier effective date.

The Treasury Department and the IRS finalized regulations that require all tax return preparers who prepare all or substantially all of a tax return or claim for refund for compensation to use a PTIN as their identifying number and to pay a $64.25 fee, which includes the amount paid to the vendor, to apply for or renew a PTIN. Tax return preparers who prepare all or substantially all of a tax return or claim for refund must obtain or renew their PTIN for the 2011 tax season.

Circular 230 requires that, to maintain active enrollment to practice before the IRS, enrolled agents must renew enrollment every third year after initial enrollment is granted. Under Circular 230, enrolled agents with social security numbers or tax identification numbers ending in 4, 5, or 6 were scheduled to renew their enrollment between November 1, 2010 and January 31, 2011. To enable these enrolled agents to renew their enrollment at the reduced fee, the IRS issued Announcement 2010–81 on October 14, 2010, which delayed the renewal period for enrolled agents with social security numbers or tax identification numbers ending in 4, 5, or 6. The renewal process cannot be reinstated until these regulations are finalized; otherwise, these enrolled agents will pay twice for the IRS to perform compliance and suitability checks. To minimize the disruption to the enrolled agent program caused by the delay of renewal, the renewal process must be reinstated as quickly as possible. Thus, the Treasury Department and the IRS find that there is good cause for these regulations to be effective upon the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Special Analyses**

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based upon the information that follows. The regulations do not place an additional filing requirement on enrolled agents or enrolled retirement plan agents and decrease the enrollment costs already in effect. Thus, the regulations should reduce the economic impact imposed by the current enrolled agent and enrolled retirement plan agent user fees.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit comments on the notice of proposed rulemaking.

**Drafting Information**

The principal author of these regulations is Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

**List of Subjects in 26 CFR Part 300**

Reporting and recordkeeping requirements, User fees.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 300 is amended as follows:

## PART 300—USER FEES

■ **Paragraph 1.** The authority citation for part 300 continues to read in part as follows:

**Authority:** 31 U.S.C. 9701.

■ **Par. 2.** Section 300.0 is amended by:
■ 1. Redesignating paragraph (b)(9) as paragraph (b)(12).
■ 2. Adding new paragraph (b)(9).
■ 3. Adding paragraphs (b)(10) and (b)(11).

The additions read as follows.

**§ 300.0 User fees; in general.**

* * * * *

(b) * * *

(9) Taking the special enrollment examination to become an enrolled retirement plan agent.

(10) Enrolling an enrolled retirement plan agent.

(11) Renewing the enrollment of an enrolled retirement plan agent.

* * * * *

■ **Par. 3.** Section 300.4 is amended by revising the heading to read as follows:

**§ 300.4 Enrolled agent special enrollment examination fee.**

* * * * *

■ **Par. 4.** Section 300.5 is amended by revising paragraphs (b) and (d) to read as follows:

**§ 300.5 Enrollment of enrolled agent fee.**

* * * * *

(b) *Fee.* The fee for initially enrolling as an enrolled agent with the IRS is $30.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning April 19, 2011.

■ **Par. 5.** Section 300.6 is amended by revising paragraphs (b) and (d) to read as follows:

**§ 300.6 Renewal of enrollment of enrolled agent fee.**

* * * * *

(b) *Fee.* The fee for renewal of enrollment as an enrolled agent with the IRS is $30.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning April 19, 2011.

**§ 300.9 [Redesignated as § 300.12]**

■ **Par. 6.** Redesignate § 300.9 as § 300.12.

■ **Par. 7.** Add new § 300.9 to read as follows:

**§ 300.9 Enrolled retirement plan agent special enrollment examination fee.**

(a) *Applicability.* This section applies to the special enrollment examination to become an enrolled retirement plan agent pursuant to 31 CFR 10.4(b).

(b) *Fee.* The fee for taking the enrolled retirement plan agent special enrollment examination is $11 per part, which is the cost to the government for overseeing the examination and does not include any fees charged by the administrator of the examination.

(c) *Person liable for the fee.* The person liable for the enrolled retirement plan agent special enrollment examination fee is the applicant taking the examination.

(d) *Effective/applicability date.* This section is applicable beginning April 19, 2011.

■ **Par. 8.** Section 300.10 is added to read as follows:

**§ 300.10 Enrollment of enrolled retirement plan agent fee.**

(a) *Applicability.* This section applies to the initial enrollment of enrolled retirement plan agents with the IRS pursuant to 31 CFR 10.5(b).

(b) *Fee.* The fee for initially enrolling as an enrolled retirement plan agent with the IRS is $30.

(c) *Person liable for the fee.* The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled retirement plan agent with the IRS.

(d) *Effective/applicability date.* This section is applicable beginning April 19, 2011.

■ **Par. 9.** Section 300.11 is added to read as follows:

**§ 300.11 Renewal of enrollment of enrolled retirement plan agent fee.**

(a) *Applicability.* This section applies to the renewal of enrollment of enrolled retirement plan agents with the IRS pursuant to 31 CFR 10.5(b).

(b) *Fee.* The fee for renewal of enrollment as an enrolled retirement plan agent with the IRS is $30.

(c) *Person liable for the fee.* The person liable for the renewal of enrollment fee is the person renewing enrollment as an enrolled retirement plan agent with the IRS.

(d) *Effective/applicability date.* This section is applicable beginning April 19, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: April 13, 2011.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2011–9469 Filed 4–14–11; 4:15 pm]

BILLING CODE 4830–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2010–0995; FRL–9296–9]**

## Approval and Promulgation of Implementation Plans; State of Nevada; PM–10; Determinations Regarding Attainment for the Truckee Meadows Nonattainment Area and Applicability of Certain Clean Air Act Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing two determinations regarding attainment for the Truckee Meadows PM–10 nonattainment area in Washoe County, Nevada ("Truckee Meadows area"). First, EPA is finalizing its determination that, based on complete and quality-assured air monitoring data for 1999–2001, the Truckee Meadows area did not attain the 24-hour National Ambient Air Quality Standard ("NAAQS") for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ("PM–10") by the applicable attainment date of December 31, 2001. Second, EPA is finalizing its determination that the Truckee Meadows area is currently attaining the PM–10 NAAQS, based upon complete, quality-assured PM–10 air quality monitoring data during the years 2007–2009. Preliminary data through June 2010 contained in EPA's Air Quality System ("AQS") are also consistent with continued attainment of the 24-hour PM–10 NAAQS. Because the Truckee Meadows area is currently attaining the PM–10 NAAQS, EPA is also finalizing its determination that the obligation to make submissions to meet certain Clean Air Act ("CAA" or "the Act") requirements related to attainment is not applicable for as long as the area continues to attain the PM–10 NAAQS.

**DATES:** This final rule is effective on May 19, 2011.

**ADDRESSES:** EPA has established a docket for this action under EPA–R09–OAR–2010–0995. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports) and some may not be available in either location (*e.g.,* confidential business information (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:** Karina O'Connor, Air Planning Office (AIR–2), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, telephone (775) 434–8176; fax (415) 947–3579; e-mail address *oconnor.karina@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms "we," "us," and "our" refer to EPA. This supplementary information is organized as follows:

### I. Summary of the Proposed Actions

On February 28, 2011, EPA proposed to determine, under sections 179(c)(1) and 188(b)(2) of the Act, that the Truckee Meadows area failed to attain the 24-hour PM–10 NAAQS by the applicable attainment date of December 31, 2001 (76 FR 10817). In that same action, EPA also proposed to determine

that the Truckee Meadows area is currently attaining the PM–10 NAAQS. These two determinations regarding attainment were based upon complete and quality-assured data for the 1999–2001 and 2007–2009 periods gathered at established state and local air monitoring stations ("SLAMS") in the nonattainment area and entered into the EPA AQS database. In addition, EPA found that preliminary data showed no exceedances of the 24-hour PM–10 NAAQS in the Truckee Meadows area during 2010. *Id.*

In conjunction with and based upon our proposed determination that the Truckee Meadows area is currently attaining the PM–10 NAAQS, we proposed under EPA's Clean Data Policy to determine that the obligation to submit certain CAA requirements is not applicable for as long as the Truckee Meadows area continues to attain the PM–10 NAAQS. Specifically, we proposed that the State's obligation to submit the following CAA requirements would be suspended if EPA finalized its rulemaking: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the reasonably available control measure ("RACM") provisions of 189(a)(1)(C), the reasonable further progress ("RFP") provisions established by section 189(c), the requirement for 189(d) plans, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act, and the requirement for additional plan revisions in section 179(d) of the Act.

For a more detailed discussion of our proposed actions, including background topics such as development of the PM–10 NAAQS, the designation, classification and air quality planning history for the Truckee Meadows area, our Clean Data Policy, and our general requirements for making attainment determinations, please refer to our proposed rule.

## II. EPA's Response to Comments

Our February 28, 2011 proposed rule provided for a 30-day comment period. We did not receive any public comments in response to the proposed rule.

## III. Final Actions

Pursuant to CAA sections 188(b)(2) and 179(c)(1) and based on complete, quality-assured data for the 1999–2001 period meeting the requirements of 40 CFR part 50, appendix K, we have determined that the Truckee Meadows nonattainment area failed to attain the 24-hour PM–10 NAAQS by the applicable attainment date of December 31, 2001. Failure by a "serious" nonattainment area such as Truckee Meadows to attain the PM–10 NAAQS by the applicable attainment date triggers a requirement for the State to submit additional plan revisions providing for attainment under CAA sections 189(d) and 179(d).

Separately and independently of the determination above, we have also determined, based on the most recent three years of complete, quality-assured data meeting the requirements of 40 CFR part 50, appendix K, that the Truckee Meadows area is currently attaining the 24-hour PM–10 NAAQS. Preliminary data for 2010 available in the AQS database are also consistent with continued attainment of the 24-hour PM–10 NAAQS. In conjunction with and based upon our determination that Truckee Meadows is currently attaining the standard, EPA has determined that the obligation to submit the following CAA requirements is not applicable for so long as the area continues to attain the PM–10 standard: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), the requirement for 189(d) plans, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act, and the requirement for additional plan revisions in section 179(d) of the Act.

This final action does not constitute a redesignation to attainment under CAA section 107(d)(3) because we have neither approved a maintenance plan as required under section 175A of the CAA nor determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remain serious nonattainment for this area until such time as EPA determines that Nevada meets the CAA requirements for redesignation of the Truckee Meadows area to attainment. Subsequently, if we determine after notice and comment rulemaking in the **Federal Register** that the Truckee Meadows area has violated the 24-hour PM–10 standard (prior to a redesignation to attainment), these requirements would once again become applicable.

## IV. Statutory and Executive Order Reviews

This final action makes two determinations of attainment based on air quality, results in the suspension of certain Federal requirements, and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the CAA obligations discussed herein do not apply to Indian tribes and thus will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Dated: April 9, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011–9295 Filed 4–18–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 202, 204, and 252

### Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed administrative and editorial changes.

**DATES:** *Effective Date:* April 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0311; facsimile 703–602–0350.

**SUPPLEMENTARY INFORMATION:** This final rule amends the DFARS as follows:

○ *202.1; 204.72.* Updates references to the Defense Logistics Agency.

○ *252.216–7004.* Provides needed editorial changes in the clause number in the heading of the clause and in the introductory text.

○ *252.234–7003.* Makes needed editorial corrections in the introductory text and adds the provision title and date.

**List of Subjects in 48 CFR Parts 202, 204, and 252**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 202, 204, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202, 204, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by revising the entry for "Defense Logistics Agency" in the definition of "contracting activity" to read as follows:

**202.101 Definitions.**

* * * * *

*Contracting activity* * * *

Defense Logistics Agency

DLA Acquisition (J–7)

DLA Aviation

DLA Energy

DLA Land and Maritime

DLA Troop Support

* * * * *

## PART 204—ADMINISTRATIVE MATTERS

■ 3. Amend section 204.7201 by revising paragraphs (a)(1) and (2) to read as follows:

**204.7201 Definitions.**

(a) * * *

(1) A code assigned by the DLA Logistics Information Service to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization (NATO) that DLA Logistics Information Service records and maintains in the CAGE master file. This type of code is known as an "NCAGE code."

* * * * *

■ 4. Amend section 204.7202–1 by revising paragraphs (a), (b)(1),(b)(2)(i)(A) and (b)(2)(i)(B), (b)(2)(ii), and (c) to read as follows:

**204.7202–1 CAGE codes.**

(a) DLA Logistics Information Service assigns or records and maintains CAGE codes to identify commercial and Government entities. DoD 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP), and Volume 7 of DoD 4100.39–M, Federal Logistics Information System (FLIS) Procedures Manual, prescribe use of CAGE codes.

(b)(1) If a prospective contractor located in the United States must register in the Central Contractor Registration (CCR) database (see FAR subpart 4.11) and does not have a CAGE code, DLA Logistics Information Service will assign a CAGE code when the prospective contractor submits its request for registration in the CCR database. Foreign registrants must obtain a North Atlantic Treaty Organization CAGE (NCAGE) code in order to register in the CCR database. NCAGE codes may be obtained from the Codification Bureau in the foreign registrant's country. Additional information on obtaining NCAGE codes is available at *http://www.dlis.dla.mil/Forms/Form_AC135.asp.*

(2) * * *

(i) * * *

(A) The monthly H-series CD–ROM that contains the H–4/H–8 CAGE master file issued by DLA Logistics Information Service. (Their address is: Customer Service, Federal Center, 74 Washington Avenue, North, Battle Creek, MI 49017–3084. Their telephone number is: Toll-free 888–352–9333);

(B) The on-line access to the CAGE file through the DLA Logistics Information System [Service];

* * *

(ii) If no CAGE code is identified through use of the procedures in paragraph (b)(2)(i) of this subsection, ask DLA Logistics Information Service to assign a CAGE code. Submit a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, (or electronic equivalent) to the address in paragraph (b)(2)(i)(A) of this subsection, ATTN: DLIS–SBB. The contracting office completes Section A of the DD Form 2051, and the contractor completes Section B. The contracting office must verify Section B before submitting the form.

(c) Direct questions on obtaining computer tapes, electronic updates, or code assignments to DLA Logistics Information Service Customer Service: Toll-free 888–227–2423 or 888–352–9333; DSN 932–4725; or commercial 616–961–4725.

■ 5. Amend section 204.7204 by revising paragraph (a) introductory text and paragraph (b) to read as follows:

**204.7204 Maintenance of the CAGE file.**

(a) DLA Logistics Information Service will accept written requests for changes to CAGE files, other than name changes, from the following entities:

* * * * *

(b) Submit requests for changes to CAGE files on DD Form 2051, or electronic equivalent, to—

DLA Logistics Information Service, DLIS–SBB, Federal Center, 74 Washington Avenue, North, Battle Creek, MI 49017–3084. Telephone Numbers: toll-free 888–352–9333, DSN 932–4725, commercial 616–961–4725. Facsimile: 616–961–4388, –4485.

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 252.216–7004 by revising the section heading and introductory text to read as follows:

**252.216–7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.**

As prescribed in 216.406, use the following clause:

* * * * *

[FR Doc. 2011–8955 Filed 4–18–11; 8:45 am]

BILLING CODE 5001–08–P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 202, 212, and 234**

**RIN 0750–AG23**

# Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items (DFARS Case 2008–D011)

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is adopting as final, with minor editorial changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008.

**DATES:** *Effective Date:* April 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Manuel Quinones, telephone 703–602–8383.

**SUPPLEMENTARY INFORMATION:**

## I. Background

DoD published an interim rule at 74 FR 34263 on July 15, 2009 to implement sections 805 and 815 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (Pub. L. 110–181). A correction to the interim rule was published at 74 FR 35825 on July 21, 2009, to clarify the types of services to which this rule applies, consistent with subsections (c)(1)(A) and (c)(1)(C)(i) of section 805 of Public Law 110–181. Section 805 specified when time-and-materials or labor-hour contracts may be used for commercial item acquisitions. Section 815 provided clarification regarding situations under which a major weapon system, subsystems of major weapon systems, or components and spare parts for major weapon systems may be acquired using procedures established for the acquisition of commercial items. Section 815 also clarified that the terms "general public" and "nongovernmental entities", with regard to sales of commercial items, do not include the Federal Government or a State, local, or foreign government.

## II. Discussion and Analysis

Three respondents submitted comments on the interim rule, which are discussed below.

### *A. Contracting Officer Guidance for Drafting Solicitations*

*Comment:* One respondent stated that the final rule should provide guidance on how contracting officers can prepare solicitations that maximize the use of commercial items while obtaining sufficient information to conduct price analysis.

*DoD Response:* The current provisions and clauses at DFARS 212.301 provide appropriate guidance to the contracting officer to assist with the preparation of solicitations and contracts for commercial items. Contracting officers receive formal instruction and on-going assistance regarding how to conduct price analysis, to include guidance provided at PGI 215.404–1. Therefore, additional guidance is not required.

### *B. Clarify and Separate Commercial Item and Price Determinations*

*Comment:* One respondent stated that the rule should clarify that commercial item determinations are separate from pricing determinations.

*DoD Response:* There is currently sufficient coverage in the FAR to assist contracting officers with making separate commercial and pricing determinations. Contracting officers have the appropriate tools to establish price reasonableness in accordance with FAR 13.106–3, FAR 14.408–2, and FAR subpart 15.4. The FAR provides guidance to allow contracting officers, at their discretion, to request the offeror to submit prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers. Additionally, to further assist the contracting officer when making a commercial item determination, FAR 12.209 instructs the contracting officer to be familiar with "customary commercial terms and conditions when pricing commercial items."

### *C. Submission of Pricing Information*

*Comment:* One respondent stated that FAR part 12 solicitations issued on a sole-source basis should specify that the pricing information is to be submitted with the proposal.

*DoD Response:* It is at the discretion of the contracting officer to specify in the solicitation the manner in which pricing information is to be submitted.

*Comment:* One respondent stated that it is not appropriate to issue a FAR part 15-type solicitation for commercial items and require the offeror to request an exception to the requirement to submit cost and pricing data.

*DoD Response:* The contracting officer determines the appropriate process to utilize when acquiring products and services and may use FAR part 15-type solicitations for commercial items. However, the contracting officer may, at his or her discretion, use as appropriate the streamlined procedures at FAR subpart 12.6 to reduce the time required to solicit and award contracts for commercial items.

### *D. Exemption for Commercially-Available Off-the-Shelf (COTS) Items*

*Comment:* One respondent agreed that COTS items should not be subject to the procedures at DFARS 234.7002(b) and (c), and recommended adding a more explicit statement, as paragraph (e), that "COTS items are exempt from the requirements of 234.7002."

*DoD Response:* DoD maintains that the inclusion of the parenthetical reference to a COTS is clear to the contracting officer and no additional statement is needed.

### *E. Define Component, Spare Part, Subsystem, and No or Negligible Value*

*Comment:* Three respondents requested that the terms "component" and "spare part" be defined. Two respondents requested that the phrase "no or negligible value" be defined and clarified and one respondent requested that the term "subsystem" be defined.

*DoD Response:* The term "component" is defined at FAR 2.101. The term "spare part" is a commonly used term understood to mean any item that is supplied as a replacement part of an end item. The term "subsystem" is also a commonly used term throughout the FAR and DFARS that denotes a functional grouping of lower-tier components that combine to perform a major function within an end item, such as electrical power, altitude control, or propulsion. DoD maintains that the phrase "no or negligible value" is self-explanatory and does not require further clarification.

### *F. Emphasize the Conditions for Limited Cost Information*

*Comment:* Two respondents stated the rule closely mirrors the legislative language and recommended that the final rule be amended to emphasize the conditions of the request for limited cost information.

*DoD Response:* The underlying basis for the rule is the legislation, and when it is practical to do so, the implementing regulations will contain language that is drawn from the legislation that does not conflict with existing requirements established to ensure the government is receiving fair and reasonable prices. The contracting officer must make a determination that a component or spare part has been appropriately identified as a commercial item. The amount of cost information required by the contracting officer to make an evaluation about the component or

spare part is determined by the sufficiency of the information provided by the prime contractor. FAR subpart 15.4 currently provides the contracting officer with pricing policy and guidance regarding obtaining pricing data. Contracting officers will ask for information sufficient to determine if the price is fair and reasonable. Therefore, additional guidance is not required.

*G. Exemption From DFARS 234.7002 for Previously Acquired of Spare Parts*

*Comment:* Two respondents requested clarification regarding how a procurement of spare parts should be handled if DoD procured a subsystem as a commercial item [using FAR part 12] years ago. Additionally, clarification was requested that DFARS 234.7002 does not apply to components or spare parts that have been previously procured under FAR part 12.

*DoD Response:* DoD maintains that an item that was previously procured as a commercial item, and defined as such, will continue to be identified as commercial, unless there is a written determination by the contracting officer that the item no longer meets the commercial item definition. Though commercial items may evolve through technical or performance advances, these items are still able to meet the commercial item definition.

*H. Price Determination for Subcontracts*

*Comment:* One respondent asked who makes the pricing determination if DoD is procuring through the subcontract. The respondent recommended that language be added that "the prime contractor is responsible for determining reasonableness of price for components and spare parts under subcontracts."

*DoD Response:* The rule does not change the pricing determination procedures for subcontractors used by the contracting officer. In accordance with DFARS 244.402, prime contractors are responsible for determining whether a particular subcontract item meets the definition of a commercial item. This does not affect the contracting officer's responsibilities to determine price reasonableness of prime contractors and subcontractors at FAR 15.404–3. However, the contracting officer may provide assistance to prime contractors being denied access to lower-tier subcontractor records.

*Comment:* One respondent suggested that applying the rule at lower tiers would be impracticable and could cause significant delays in the negotiation and award of subcontracts that could adversely impact performance of the prime contract.

*DoD Response:* The definition of commercial items is not limited solely to items supplied directly from prime contractors. It also extends to commercial items acquired by the prime contractor to be sold to the Government from subcontractors at all tiers, including items transferred from a contractor's division, affiliates, or subsidiaries. The prime contractor has the responsibility to determine if a subcontracted item meets the definition of a commercial item, as defined in FAR 2.101.

*Comment:* One respondent stated that the rule is in potential conflict with DFARS part 244. The respondent stated that if the rule applies to subcontracts, it would conflict with the language at DFARS 244.402(a) that requires contractors to determine if the subcontract item meets the definition of a commercial item.

*DoD Response:* The rule aligns with DFARS 244.402(a). It further supports the contracting officer's responsibility to make the commercial item determination for items acquired and the prime to flow this requirement down to subcontractors.

*I. Procedures for Applying the Rule*

*Comment:* One respondent recommended that there be specific procedures for applying the rule.

*DoD Response:* DoD maintains that the rule is clear in its implementation of the statute. It informs the prime contractor and the contracting officer of the procedures to be followed.

*Comment:* One respondent recommended that the solicitation and contract clauses inform the contractor that the rule applies for procurements constituting a major weapon system.

*DoD Response:* The rule at DFARS 234.7002(a) instructs the contracting officer that the acquisition of a major weapon system may be treated as a commercial item. The conditions required to make this determination are outlined in the DFARS for the contracting officer. Therefore, additional guidance is not required.

*Comment:* One respondent requested that the contracting officer be prohibited from changing the determination unless there is a substantial change in the nature of the work performed by the subcontractor, if the item no longer meets the definition of commercial items.

*DoD Response:* Contracting officers are required to fully and adequately document the contract file regarding the market research performed by the contracting officer as required by FAR 10.002(e). The contracting officer is required to provide the rationale supporting his or her determination that the commercial item definition at FAR 2.101 was satisfied. Therefore, the contracting officer must follow the instructions regarding defining a commercial item from subcontractors. The contracting officer must document any changes that warrant the non-applicability of the definition of commercial items.

*J. Reference Procedures in FAR 15.4 and DFARS 215.4*

*Comment:* One respondent recommended that references to the procedures in FAR part 15.4 and DFARS 215.4 be included.

*DoD Response:* The rule at DFARS 212.207(b)(iii)(B) refers the contracting officer to the procedures at FAR 15.4 if the services to be acquired are subject to FAR 15.4.

*K. Contracting Officers Make Prompt Commercial Item Determination*

*Comment:* One respondent recommended that contracting officers be instructed to respond promptly to requests for determination if a proposed item is a commercial item, and to provide the reason if it is determined that the item is not commercial, to assist the contractor to resolve the matter. Another respondent recommended encouraging contracting officers and contractors to address requirements of the rule prior to award of the prime contract.

*DoD Response:* FAR 2.101 defines a commercial item and provides the contracting officer instructions regarding how to determine whether or not an item is commercial. The commercial determination is made before contract award. This determination is based on market research, an analysis of the marketplace, and the Government's requirement. FAR part 12 provides the contracting officer specific guidance, policies, and procedures regarding the acquisition of commercial items. The contracting officer works within the timeframe required to procure the item based upon the Government's need for the requirement.

**III. Executive Order 12866 and Executive Order 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### IV. Regulatory Flexibility Act

DoD certifies that this 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 rule reinforces existing requirements for the appropriate use of commercial acquisition procedures and for ensuring that contract prices are fair and reasonable.

### V. Paperwork Reduction Act

The rule does not impose 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 Parts 202, 212, and 234

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, the Defense Acquisition Regulations System confirms as final the interim rule published at 74 FR 34263 on July 15, 2009, with the following changes:

■ 1. The authority citation for 48 CFR parts 202, 212, and 234 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and CFR chapter 1.

## PART 202—DEFINITIONS OF WORDS AND TERMS

### § 202.101 [Amended]

■ 2. Section 202.101 is amended in the definition for *General public* and *non-governmental entities* by removing "Section" and adding in its place "section".

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

### § 212.207 [Amended]

■ 3. Section 212.207 paragraph (b) introductory text is amended by removing "Section" and adding in its place "section".

[FR Doc. 2011–8947 Filed 4–18–11; 8:45 am]

BILLING CODE 5001–08–P

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## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Parts 209 and 252

**RIN 0750–AG78**

## Defense Federal Acquisition Regulation Supplement; Ownership or Control by a Foreign Government (DFARS Case 2010–D010)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is adopting as a final rule, without change, an interim rule that implemented revisions to DoD Directive-Type Memorandum (DTM) 09–019, "Policy Guidance for Foreign Ownership, Control, or Influence (FOCI)." This DTM revises the description of communications security material that is "proscribed information."

**DATES:** *Effective date:* April 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Julian Thrash, Telephone 703–602–0310.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD published an interim rule in the **Federal Register** at 75 FR 35684 on June 23, 2010, to implement changes required by Directive-Type Memorandum (DTM) 09–019, "Policy Guidance for Foreign Ownership, Control, or Influence (FOCI)," which required conforming changes to the DFARS. The public comment period closed August 23, 2010, and no public comments were received. DoD has therefore adopted the interim rule as a final rule without change.

### II. Executive Order 12866 and Executive Order 13563

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

### III. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because it only impacts companies that are owned or controlled by a foreign government, and most small entities, as defined in the Regulatory Flexibility Act, are not owned or controlled by a foreign government.

DoD published an interim rule in the **Federal Register** at 75 FR 35684 on June 23, 2010, to which there were no public comments.

### IV. Paperwork Reduction Act

The rule does not impose 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 Parts 209 and 252

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CRF parts 209 and 252 published at 75 FR 35684 on June 23, 2010, is adopted as final without change.

[FR Doc. 2011–8953 Filed 4–18–11; 8:45 am]

BILLING CODE 5001–08–P

# Proposed Rules

Federal Register
Vol. 76, No. 75
Tuesday, April 19, 2011

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

## DEPARTMENT OF ENERGY

### 10 CFR Part 429

**[Docket Number: EERE–2010–BT–CE–0014]**

**RIN 1904–AC23**

### Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Energy (DOE or the "Department") proposes to amend the compliance dates for revisions to its certification, compliance, and enforcement regulations for certain commercial and industrial equipment covered under the Energy Policy and Conservation Act of 1975, as amended (EPCA or the "Act"). Specifically, DOE is tentatively proposing an 18-month extension to the compliance date for the certification provisions for commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; commercial water heating equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers. DOE is also considering extending the compliance date for the certification provisions for other commercial equipment based on comments.

**DATES:** DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) postmarked no later than May 19, 2011.

**ADDRESSES:** Any comments submitted must reference the Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment, and provide docket number EERE–2010–BT–CE–0014 and/or RIN number1904–AC23. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: CCE-2010-BT-CE-0014@ee.doe.gov.* Include docket number EERE–2010–BT–CE–0014 and/or RIN 1904–AC23 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, 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 the above telephone number for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, 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) 586–6590. E-mail: *Ashley.Armstrong@ee.doe.gov;* and Ms. Laura Barhydt, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–32, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 287–5772. E-mail: *Laura.Barhydt@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** On March 7, 2011, DOE published a final rule in the **Federal Register** that, among other things, modified the requirements regarding manufacturer submission of compliance statements and certification reports to DOE (March 2011 Final Rule). 76 FR 12421. The March 2011 Final Rule will provide DOE more comprehensive information about the energy and water use characteristics of products sold in the United States. Furthermore, the certification provisions are central to the Department's regulatory framework for ensuring that covered products and equipment sold in the Unites States comply with existing federal energy conservation standards and associated regulations.

The March 2011 Final Rule was largely procedural in nature; it did not amend pre-existing sampling provisions, test procedures, or conservation standard levels for any EPCA products or equipment. It did, however, impose new reporting requirements, including a requirement that manufacturers submit annual reports to the Department certifying compliance of their basic models with applicable standards. It also revised the types of information manufacturers must provide in that submission. Finally, the Department emphasized that manufacturers could use their discretion in grouping individual models as a certified "basic model" such that the certified rating for the basic model matched the represented rating for all included models. *See* 76 FR 12428–12429 for more information. This reflected a basic requirement of the Department's longstanding self-certification compliance regime—that efficiency certifications and representations must be supported by either testing or an approved alternative method of estimating efficiency.

The March 2011 Final Rule provides for the revised certification provisions to be effective on July 5, 2011. Since the publication of the Final Rule, certain manufacturers of particular types of commercial and industrial equipment have stated that they would be unable to meet that deadline. In particular, manufacturers of commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; commercial water heating equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers (as defined in 10 CFR part 431) contend that certifying supported basic model ratings under the revised provisions would require a cost-

prohibitive amount of additional testing and take far longer than the time allowed.

The Department did not intend to change, let alone increase, testing burdens through the certification reporting provisions of the March 2011 Final Rule. However, the new information provided suggests that, for certain commercial manufacturers, the interplay between the reporting requirements, current industry practices, and preexisting regulations may mean that such manufacturers may need additional time to comply with the regulations. In particular, the Department has become aware of concerns related to its revised regulations for alternative efficiency determination methods (AEDMs), which are intended to reduce testing burdens by allowing manufacturers to use computer simulations, mathematical models, and other alternative methods to determine the amount of energy used by a particular basic model. For example, some commercial manufacturers have suggested that the AEDM provisions are too restrictive, overly burdensome, and unavailable for some products that would benefit from them and, as a result, do not permit the viable alternative to testing intended by the Department.

Responding in part to these concerns, on April 8, 2011, the Department issued a request for information (RFI) (available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/arm_aedms_rfi.pdf*) seeking comment on, among other things, the use of such alternative methods for determining the efficiency of commercial and industrial equipment. As the RFI explained, the Department intends to use this information to propose revisions to improve the existing AEDM provisions in a future rulemaking. For commercial manufacturers, the Department understands that addressing some of the concerns with the AEDM provisions may alleviate some of the burden reported by these manufacturers of complying with DOE's existing regulations and the March 2011 Final Rule certification reporting provisions. Given the testing burdens reported by certain commercial manufacturers and the Department's recent RFI on alternative ways to estimate efficiency in lieu of testing, DOE tentatively proposes an 18-month delay in the compliance date for filing complete certification reports for manufacturers of commercial refrigeration equipment; commercial heating, ventilating, HVAC equipment; commercial water heating equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers.

The Department seeks comment on this proposed delay for these specified manufacturers. We also seek comment on whether a longer or shorter period of time would be more appropriate. In addition, the Department seeks comment on whether manufacturers of other types of commercial or industrial equipment face similar circumstances with respect to unintended testing burdens or AEDM concerns that would require additional time to comply with the certification reporting requirements in the March 2011 Final Rule.

The Department seeks comment on what, if any, limited reporting requirement should be required of manufacturers of these types of commercial equipment during the interim period. For example, DOE seeks comment on whether it should require these manufacturers to register with the Department's electronic CCMS system in the meantime.

## Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

## I. Procedural Issues and Regulatory Review

### *A. Review Under Executive Order 12866*

This proposed rule has been determined not to be a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov*.

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule would merely extend the compliance date of a rulemaking already promulgated. To the extent such action has any economic impact it would be positive in that it would allow regulated parties additional time to come into compliance. DOE did undertake a full regulatory flexibility analysis of the original CCE rulemaking. That analysis considered the impacts of that rulemaking on small entities. As a result, DOE certifies that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities.

### *C. Review Under the National Environmental Policy Act*

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 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an

environmental impact statement is required.

## II. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's NOPR.

## List of Subjects in 10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

Issued in Washington, DC, on April 12, 2011.

**Kathleen Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.*

For the reasons stated in the preamble, DOE is proposing to amend part 429 of title 10 of the Code of Federal Regulations, as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

2. Add in § 429.12 a new paragraph (i) to read as follows:

### § 429.12 General requirements applicable to certification reports.

* * * * *

(i) *Certain commercial equipment.* Manufacturers of commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; commercial water heating equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers are not required to comply with paragraphs (a) through (f) of this section until [*date 18 months following publication of final rule*].

[FR Doc. 2011–9473 Filed 4–18–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0415; Directorate Identifier 2007–NM–256–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Model 737 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for certain Model 737 airplanes. The original NPRM would have required repetitive inspections, lubrications, and repetitive repairs/overhauls of the ball nut and ballscrew and attachment (Gimbal) fittings for the trim actuator of the horizontal stabilizer; various installation(s); and corrective actions if necessary; as applicable. The original NPRM resulted from a report of extensive corrosion of a ballscrew used in the drive mechanism of the horizontal stabilizer trim actuator (HSTA). This action revises the original NPRM by adding airplanes to the applicability. We are proposing this supplemental NPRM to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the HSTA and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

**DATES:** We must receive comments on this supplemental NPRM 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0415; Directorate Identifier 2007–NM–256–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

We issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737 airplanes. That original NPRM was published in the **Federal Register** on April 28, 2008 (73 FR 22840). That original NPRM proposed to require repetitive inspections, lubrications, and repetitive repairs/overhauls of the ball nut and ballscrew and attachment (Gimbal) fittings for the trim actuator of the horizontal stabilizer; various installation(s); and corrective actions if necessary; as applicable.

That original NPRM resulted from a report of extensive corrosion of a ballscrew used in the drive mechanism

of the horizontal stabilizer trim actuator (HSTA) on a Model 757 airplane. Extensive corrosion of the primary load path ball bearings in the ballscrew assembly, if not corrected, could result in an undetected failure of the primary load path for the ballscrew in the drive mechanism of the HSTA and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

The ballscrew assembly on Model 757 airplanes is similar to those on the affected Model 737 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

**Other Relevant Rulemaking**

We are considering additional rulemaking to address the identified unsafe condition on Model 757 airplanes.

**Relevant Service Information**

We have reviewed Boeing Alert Service Bulletins 737–27A1277, Revision 2, dated January 8, 2010 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes); and 737–27A1278, Revision 1, dated January 7, 2010 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes). Boeing Alert Service Bulletins 737–27A1277, Revision 1, dated July 25, 2007; and 737–27A1278, dated May 24, 2007; were referred to in the original NPRM as the appropriate sources of service information for accomplishing the proposed actions. The revisions of the service information incorporate the following changes:

- Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010, adds Model 737–900ER airplanes to Group 2 of the effectivity, clarifies certain inspections necessary in Work Packages 1 and 2, and contains certain editorial changes.

- Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010, corrects the work instructions for the horizontal stabilizer trim actuator (HSTA) name plate identification information in Work Package 4 and clarifies certain inspections necessary in Work Packages 1 and 2 and contains certain editorial changes. In addition, the Horizontal Stabilizer Gearbox End Play Test is added because the gearbox backlash inspection is only identified in the airplane maintenance manual for Model 737–600, –700, –800, and –900 airplanes, but is also applicable to Model 737–100, –200, –300, –400, and –500 airplanes.

**Actions Since Issuance of Original NPRM**

Since we issued the original NPRM, we have changed this supplemental NPRM to include the revised service information, which expands the applicability of the original NPRM. We have also revised paragraph (h) of the original NPRM (paragraph (g) of the supplemental NPRM) to include credit for actions accomplished before the effective date of the AD in accordance with previous revisions of the service information.

**Comments**

We have considered the following comments on the original NPRM.

**Request To Change Applicability**

Boeing asked that we revise the applicability in the original NPRM to specify that it applies to all Model 737 airplanes instead of listing the minor models associated with the referenced service information. Boeing stated that this would avoid possible supersedure of the AD or certification maintenance requirements on future type certification programs.

We agree with the commenter for the reasons provided. We have changed paragraph (c) and the **SUMMARY** section of this supplemental NPRM to refer to all Model 737 airplanes.

**Request To Clarify Procedures in Referenced Service Information**

Air Transport Association (ATA), on behalf of its member Air Tran Airways (Air Tran) stated that the referenced service information is very difficult to interpret and cites examples from the service information. Air Tran stated that the accomplishment instructions specified in the service information contain language that is not specific and can not be used to make definitive determinations with regard to serviceability. Air Tran cited an example in Section 3.B.1.d.(2) of Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, which specifies "Large amounts of grease present * * *". This language is not specific and open to a high degree of subjectivity. Air Tran added that other examples are in Section 3.B.1.n.(1) of this service bulletin, which specifies "majority of grease," and in several places in Figures 1 and 2 of this service bulletin. Air Tran notes that the work instructions in Section 3.B. of Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, do not exactly match the instructions provided with the figures. Air Tran stated that having two sets of work instructions makes if difficult to follow, and could result in missed or partially accomplished work steps. Air Tran adds that Section 3.B.1.d.(8)(c) of this service bulletin provides instructions to check for obvious differences in thread shape between thread grooves "as given in CMM 27–41–01." Air Tran noted that CMM 27–41–01 does not provide any procedure for checking for obvious differences. Air Tran also noted that the subject section should specify "refer to" rather than "as given in."

Qantas has similar views to Air Tran and added that referring to the procedures specified by Air Tran for the on-wing inspection will be confusing to mechanics because the procedures are not designed to be completed on-wing. Qantas also suggested a better explanation and pictures be added to Section 3.B.1.n.(1) of Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, to quantify what is normal and what is an indication of a failure. Qantas noted that where there is evidence of a grease seal starting to fail, but no metallic debris, replacement of the unit should be deferred for up to five days, this would ease the burden of excess airplane down time. Qantas also noted that Section 3.B.1(o) of the procedures is not specified in the requirement table in paragraph 1.E. of Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007. Qantas suggested it be included in that paragraph. Qantas also asks that the detailed inspection criteria specified in Section 3.B.1.(d) of this service bulletin be clarified.

We agree that the procedures in the referenced service information should be clarified. We asked Boeing to revise the subject service information to provide better guidance and further clarification of the tasks that are specified. Boeing revised the service information as requested, as noted under the "Actions Since Original NPRM was Issued" and "Relevant Service Information," sections of this AD and further clarification of the procedures is provided in those revisions, as well as the deletion of unnecessary procedures. Some portions of the task descriptions were left open to allow operators some latitude in accomplishing the tasks. We have revised this AD to refer to the new service information.

We agree that processes referred to by the commenters are not designed for on-wing or on-airplane inspections. Boeing provides clarification of the intent of these processes in Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010. Therefore, we have made no change to the

supplemental NPRM regarding this issue.

Qantas also asked that Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, be revised. Qantas stated that the footnote at the top of page 10 of that service bulletin specifies "Boeing recommends that operators continue to perform lubrication tasks for the Stabilizer Trim Actuator given in Maintenance Planning Document (MPD) Section 1 and 737 AMM 12–22–41." Qantas added that the MPD task requires lubrication every 1,600 flight hours or 8 months, and paragraph 3.B.1., of Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, specifies doing the same task every 1,600 flight hours or 12 months. Qantas noted that the Boeing 737 MPD and service bulletin tasks should not both be required. Qantas stated that the FAA or Boeing should clarify the lubrication tasks specified in that service bulletin, so operators can take credit for doing the task in accordance with that service bulletin.

We agree with the commenter. Boeing revised the service information specified in the "Relevant Service Information" and "Actions Since Original NPRM was Issued" sections of this supplemental NPRM. The referenced note has been removed and a new note added to Table 1 of paragraph 1.E., Compliance, of both service bulletins, specifying that accomplishing the lubrication task in Boeing Alert Service Bulletin 737–27A1277 or 737–27A1278 meets the intent of the lubrication task in the associated MPD.

**Clarify Difference in Compliance Time Intervals**

Boeing and US Airways asked that the compliance time interval specified in the original NPRM for the repetitive repair/overhaul be changed from 20,000 or 25,000 flight cycles to 20,000 or 24,000 flight hours (depending on airplane configuration) for Model 737–100, –200, –300, –400, and –500 series airplanes. Boeing stated that Tables 1 and 2 of Boeing Alert Service Bulletin 737–27A1278, dated May 24, 2007, specify the correct interval. Boeing adds that the subsection, Repetitive Repair/Overhaul, should be changed from "and thereafter at intervals not to exceed 20,000 or 25,000 flight cycles * * *" to "and thereafter at intervals not to exceed 20,000 or 24,000 flight hours * * *" US Airways reiterated the Boeing comment and recommends the difference be clarified.

We agree that clarification is necessary. The repetitive interval referred to in the original NPRM is incorrect. The correct interval of 20,000 flight hours or 24,000 flight hours (depending on airplane configuration) is specified in Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010. We have clarified the compliance time in this supplemental NPRM by referring to Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010.

**Clarify Difference in Secondary Service Information Reference**

US Airways asked that the secondary service information referenced in Note 1 of the original NPRM be clarified. US Airways stated that Note 1 refers to Linear Motion Service Bulletin 7901708, Revision A, dated July 26, 2005; however, the service bulletin supplied to US Airways from Linear Motion specifies Revision B.

We agree with the commenter. Since Revision B merely corrects a typographical error, Linear Motion Service Bulletin 7901708, Revisions A and B, both dated July 26, 2005, are acceptable. We have revised Note 1 of this supplemental NPRM accordingly.

**Request for Credit for Accomplishing Previously Issued Service Information**

US Airways referenced paragraph (h) of the original NPRM which specified "Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–27A1277, dated July 21, 2005, are acceptable for compliance with the corresponding requirements of this AD." US Airways asked that a similar paragraph be added to give credit for previous accomplishment of Boeing Alert Service Bulletin 737–27A1278, dated May 24, 2007.

We agree with the commenter and have changed paragraph (g) of this supplemental NPRM to give credit for certain actions done in accordance with Boeing Alert Service Bulletin 737–27A1278, dated May 24, 2007.

**Request To Clarify Compliance Times**

Boeing asked that an additional statement be added to the compliance time in paragraph (g) of the original NPRM to clarify that it is dependent on the airplane configuration defined in the referenced service information. Boeing stated that the multiple recommended compliance times may be confusing to operators as there is no distinction of dependence on airplane configuration for the initial compliance times. Boeing suggested clarifying the compliance time by adding "(depending upon airplane configuration called out in the SB)" in parenthesis.

We agree with the commenter for the reasons provided. We have changed paragraph (g) of the supplemental NPRM to include the phrase "depending on airplane configuration" in parenthesis following the compliance time reference.

**Request To Use Continuous Maintenance Program/Move Maintenance Planning Document (MPD) Tasks to Referenced Service Information**

ATA on behalf of its member American Airlines reiterated the American Airlines comment that, except for accomplishing the installation of the strengthened ballnut retainers, all remaining requirements are part of the Model 737–800 continuous maintenance program and are subject to the type certification maintenance program rules. American Airlines stated that there are no historical indications for Model 737–NG airplanes that warrant an AD. American Airlines did not agree that the requirements in the AD that pertain to different airplane models with different designs and component manufacturers are strong enough to suspend parts of a continuous maintenance program. American Airlines added that if we have data not cited in the NPRM that substantiates an AD then the specified tasks should be removed from the continuous maintenance program. American Airlines concluded that continuous maintenance tasks such as inspection and lubrication typically have no terminating action by definition.

Air Tran supported the requirement to accomplish the installation of the strengthened ballnut retainers, but also requested that we allow the use of maintenance tasks and states that the lubrication requirements of Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, are similar to those in Boeing 737NG MPD Task 27–102–00 and the inspection requirements are similar to those in Boeing 737NG MPD Task 27–110–00. Air Tran added that the full requirements of Boeing 737NG MPD Tasks 27–102–00 and 27–110–00 should be incorporated into the AD and the subject MPD tasks removed from the Boeing 737NG MPD to avoid confusion. Qantas also asked that Boeing 737NG MPD Task 27–110–00–1 be incorporated into Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007. Qantas stated that if this task is included operators will not perform duplicate tasks from the Boeing 737NG MPD and referenced service information.

We infer that ATA, American Airlines, Air Tran, and Qantas are

asking that the Boeing 737NG MPD Tasks specified in the original NPRM be removed, except for accomplishing the installation of the strengthened ballnut retainers, because all remaining requirements are part of the maintenance program. We do not agree with the commenters. We proposed mandating the maintenance tasks and intervals because of the criticality of maintaining the horizontal stabilizer control system; the consequences of not performing the maintenance tasks; and the service history attributed to lack of adequate horizontal stabilizer system maintenance on other airplanes. These maintenance actions can affect the safety of the airplane if they are not performed in a timely manner. We approve the maintenance review board report (MRBR), which is the basis for the MPD; the MRBR is an industry document that can only be changed by the MRB. The overlap is noted in Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, which identifies the MPD tasks. No revision to the MRBR is currently planned. Failure to perform the actions in this supplemental NPRM can lead to an unsafe condition; therefore, we have made no change to the supplemental NPRM in this regard.

Sun Country Airlines (Sun Country) stated that operators may need clarification on whether or not "restore," as identified in Boeing 737NG MPD Item 27–108–00, meets the intent of the actions in the original NPRM. Sun Country stated that the repetitive actions specified in Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, are closely related to Boeing 737NG MPD Items 27–102–00, 27–108–00, and 27–110–00, in procedure as well as interval. Sun Country asked if operators following these MPD items can take credit for those already established maintenance requirements in lieu of the actions in the original NPRM. Sun Country added that because these MPD items already exist it would be advisable to change them to certification maintenance requirements (CMR) instead of mandating AD action.

We agree that certain requirements in Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, are similar to those tasks in the Boeing 737NG MPD. Boeing revised the referenced service information to address this issue. A note was added to the compliance tables in the service information stating that accomplishing the lubrication task in the service information meets the intent of Boeing 737NG MPD lubrication Task 27–102–00. We do not agree that the MPD Items should be changed to CMR requirements, because CMR requirements are established as part of the type certification of an airplane and are not initiated due to in-service issues. There are certain differences between the MPD tasks and the proposed requirements in the supplemental NPRM (e.g., inspections of the cable drum and electrical connector are not part of the actions specified in the referenced service information). We have made no change to the supplemental NPRM in this regard.

**Request To Include Serial Numbers for Ballnut Tube Retainer Units**

ATA on behalf of its member Air Tran noted that the identification of multiple airplane groups creates some confusion regarding which ballnut tube retainer units need to be installed. Air Tran asked that the AD identify the specific serial numbers of the units requiring modification to ensure that all affected units are covered.

We do not agree with the commenters. Operators can determine if the modification has been incorporated by verifying the part number on the component or doing a visual inspection of the ballscrew assembly. The proposed requirements in this supplemental NPRM prohibit the installation of affected unmodified ballscrews on certain airplanes. As standard practice, the airplane manufacturer addresses affected airplanes in the delivered condition in the effectivity of its service information. We have made no change to the supplemental NPRM in this regard.

**Request To Review Paragraph 1.E. of the Referenced Service Information**

Qantas asked that we review whether the desired level of inspection will be achieved using the current Boeing 737 CMM. Qantas stated that paragraph 1.E. of Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, specifies an overhaul every 25,000 flight hours; Boeing 737 CMM 27–45–12 recommends the unit to be tested and disassembled only to the extent necessary to repair test failures. Qantas required vendors to strip the unit and complete visual and magnetic particle inspections.

We do not agree with the commenter. The intervals and tasks necessary for the lubrication, detailed inspection and overhaul/repair of the HSTA described in Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010, and proposed in this supplemental NPRM, address the unsafe condition of an undetected failure of the ballscrew primary load path and subsequent wear and failure of the secondary load path for affected airplanes. Due to these factors, we have determined that the desired level of inspection will be achieved when performing an HSTA overhaul. We have made no change to the supplemental NPRM in this regard.

**Request To Extend Overhaul Life Limit**

Qantas stated that by making the overhaul life limit mandatory the airline loses any flexibility in escalating the overhaul life based on service experience. Qantas added that there is considerable safety benefit in doing thorough overhauls with feedback of findings; one of the incentives for doing this is it includes the possibility of an overhaul life extension. Qantas noted that the original NPRM indicates an overhaul cost of $3,200; however, a recent procurement exercise by Qantas indicated the overhaul costs are about $18,000 per unit, not including any parts replacements. Qantas concluded that there is a considerable burden if extending the overhaul life is not permitted.

We do not agree to extend the intervals for maintenance tasks based on the commenter's service experience. In consideration of the safety implications, we determined that the compliance time for the maintenance tasks, as proposed, represents an appropriate interval in which the overhaul can be done in a timely manner within the fleet, while still maintaining an adequate level of safety. Although we acknowledge that the overhaul cost may be higher, the estimate in this supplemental NPRM is limited only to the cost of actions actually required by the AD, and is based on an estimate from the airplane manufacturer of the labor hours and subsequent cost necessary to accomplish those tasks. Therefore, we have made no change to the supplemental NPRM is this regard.

**FAA's Determination and Proposed Requirements of the Supplemental NPRM**

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

**Explanation of Changes to This Supplemental NPRM**

We have added a new paragraph (d) to this supplemental NPRM to provide the Air Transport Association (ATA) of America subject code 27; flight controls. This code is added to make this supplemental NPRM parallel with other new AD actions. We have reidentified subsequent paragraphs accordingly.

We have removed Table 1 of the NPRM from this supplemental NPRM. Instead, we have provided the full service bulletin citations throughout this supplemental NPRM.

Since issuance of the original 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 proposed AD would affect 1,641 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action [1] | Work hours [1] | Average labor rate per hour | Parts | Cost per product [1] | Number of U.S.-registered airplanes | Fleet cost [1] |
|---|---|---|---|---|---|---|
| Detailed inspections | 2 or 4 | $85 | None | $170 or $340, per inspection cycle. | 1,641 | Between $278,970, and $557,940 per inspection cycle. |
| Lubrications | 1 or 3 | 85 | None | $85 or $255, per lubrication cycle. | 1,641 | Between $139,485, and $418,455 per lubrication cycle. |
| Repairs/overhauls | 40 | 85 | None | $3,400 per repair/overhaul. | 1,641 | $5,579,400 per repair/overhaul cycle. |
| Installations | Between 1 and 3 | 85 | $2,200 | Between $2,285 and $2,455. | 1,352 | Between $3,089,320 and $3,319,160. |

[1] Depending on airplane configuration.

The number of work hours, as indicated above, is presented as if the accomplishment of the actions in this proposed AD is to be conducted as new "stand alone" actions. However, in actual practice, the lubrications, detailed inspections, and overhauls are currently being done as part of normal airplane maintenance. The repair can be done coincidentally or in combination with the normally scheduled HSTA and ballscrew overhaul. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

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

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Remove/replace HSTA | Between 3 and 8 work hours × $85 per hour = between $255 and $680. | $0 | Between $418,455 and $1,115,880. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**The Boeing Company:** Docket No. FAA–2008–0415; Directorate Identifier 2007–NM–256–AD.

**Comments Due Date**

(a) We must receive comments by May 16, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Model 737 airplanes; certificated in any category.

**Subject**

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

**Unsafe Condition**

(e) This AD results from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer trim actuator (HSTA). We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the HSTA and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

**Compliance**

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

**Inspections, Lubrications, Repairs/Overhauls, and Applicable Corrective Actions**

(g) At the applicable compliance time and repeat intervals listed in Tables 1 and 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; or Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; as applicable (depending on airplane configuration): Do the inspections, lubrications, repairs/overhauls, installation(s), and applicable corrective actions, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; or Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; as applicable; except as provided by paragraphs (g)(1) and (g)(2) of this AD.

**Note 1:** Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; refers to Umbra Cuscinetti Service Bulletin 07322–27–01, dated December 21, 2004; Linear Motion Service Bulletin 7901708, Revision A, or Revision B, both dated July 26, 2005; Boeing 737 Service Bulletin 27–1046, Revision 1, dated April 5, 1974; and Skytronics Service Bulletin 93004, dated September 1, 2005; as applicable; as additional sources of service information for accomplishing the applicable specified actions.

**Note 2:** Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; refers to Umbra Cuscinetti Service Bulletin 07322–27–01, dated December 21, 2004; as an additional source of service information for accomplishing the applicable specified actions.

(1) Where paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; or Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; as applicable; specifies an initial compliance time for accomplishing the initial inspection, lubrication, or repair/overhaul, this AD requires doing the applicable initial action(s) at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) At the applicable compliance time specified in paragraph 1.E, "Compliance," of Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; or Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; as applicable.

(ii) Within the applicable compliance time specified in paragraph (g)(1)(ii)(A), (g)(1)(ii)(B), or (g)(1)(ii)(C) of this AD.

(A) For the initial detailed inspection and lubrication: Within 6 months after the effective date of this AD.

(B) For the initial repair/overhaul: Within 12 months after the effective date of this AD.

(C) For the installation(s): Within 12 months after the effective date of this AD.

(2) Where Table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010, specifies a compliance time of "* * * within 25,000 Flight Hours since the latest horizontal stabilizer trim actuator (HSTA) Overhaul from the date of Revision 1 of this Service Bulletin * * *," this AD requires compliance within 25,000 flight hours since the last overhaul of the trim actuator of the horizontal stabilizer.

**Credit for Actions Accomplished in Accordance With Previous Service Information**

(h) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletins 737–27A1277, Revision 1, dated July 25, 2007; or 737–27A1278, dated May 24, 2007; as applicable; are considered acceptable for compliance with the corresponding actions specified in this AD.

**Parts Installation**

(i) As of the effective date of this AD, no person may install a ballscrew assembly in the drive mechanism of the HSTA on any airplane, unless it has been inspected and modified, as applicable, in accordance with paragraph (g) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Seattle 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. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

**Related Information**

(k) For more information about this AD, contact Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

Issued in Renton, Washington, on April 13, 2011.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–9410 Filed 4–18–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0381; Directorate Identifier 2010–NM–203–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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

an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Several reports have been received on failures of the main landing gear (MLG) stabilizer extension springs. A landing gear audit has confirmed that the MLG may not lock in the down-lock position with the absence of both MLG stabilizer extension springs. The loss of the locking mechanism could result in the collapse of the main landing gear.
>
> * * * * *

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

**DATES:** We must receive comments on this proposed AD by June 3, 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.

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

## Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0381; Directorate Identifier 2010–NM–203–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

## Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–22, dated July 20, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Several reports have been received on failures of the main landing gear (MLG) stabilizer extension springs. A landing gear audit has confirmed that the MLG may not lock in the down-lock position with the absence of both MLG stabilizer extension springs. The loss of the locking mechanism could result in the collapse of the main landing gear.
>
> This [TCCA] directive is to mandate the incorporation of a new maintenance task for the MLG stabilizer extension springs.

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

## Relevant Service Information

Bombardier has issued Temporary Revision MRB–45, dated October 6, 2009 to Section 1–32, Systems/Powerplant Maintenance Program of Part 1 of the Maintenance Review Board (MRB) Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of This Proposed AD

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

## Differences Between This AD and the MCAI or Service Information

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

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

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 65 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,525, or $85 per product.

## Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Bombardier, Inc.:** Docket No. FAA–2011–0381; Directorate Identifier 2010–NM–203–AD.

**Comments Due Date**

(a) We must receive comments by June 3, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001, 4003 and subsequent.

**Subject**

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

**Reason**

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

Several reports have been received on failures of the main landing gear (MLG) stabilizer extension springs. A landing gear audit has confirmed that the MLG may not lock in the down-lock position with the absence of both MLG stabilizer extension springs. The loss of the locking mechanism could result in the collapse of the main landing gear.

* * * * *

**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 30 days after the effective date of this AD, revise the maintenance program by incorporating Task 320100–213 as specified in Bombardier Temporary Revision MRB–45, dated October 6, 2009, to Section 1–32, Systems/Powerplant Maintenance Program, of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. The initial compliance time for Task 320100–213 is within 600 flight hours after the effective date of this AD.

**No Alternative Actions or Intervals**

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

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

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

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

**Related Information**

(j) Refer to MCAI Transport Canada Civil Aviation (TCCA) Airworthiness Directive CF–2010–22, dated July 20, 2010; and Bombardier Temporary Revision MRB–45, dated October 6, 2009, to Section 1–32, Systems/Powerplant Maintenance Program, of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7; for related information.

Issued in Renton, Washington, on April 12, 2011.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–9408 Filed 4–18–11; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0312; Directorate Identifier 2010–NM–159–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR Airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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

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

a fire penetrates through the firewall of the APU.

* * * * *

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

**DATES:** We must receive comments on this proposed AD by June 3, 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.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; e-mail *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

## Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0312; Directorate Identifier 2010–NM–159–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

## Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2010–06–03R1, dated September 20, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

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

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

## Relevant Service Information

Embraer has issued Service Bulletin 145–53–0062, Revision 06, dated August 11, 2010; Subjects 5–20–47 and 5–20–57 of Chapter 5 of the EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 53, dated October 28, 2010; and Chapter 53–32–13, Rear Fuselage II—APU Firewall—Repairs, of the EMBRAER EMB135, ERJ140, EMB145, Structural Repair Manual SRM–145/1142, Revision 43, dated December 1, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of This Proposed AD

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

## Differences Between This AD and the MCAI or Service Information

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

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

## Costs of Compliance

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

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

## Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

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

**Comments Due Date**

(a) We must receive comments by June 3, 2011.

**Affected ADs**

(b) None.

**Applicability**

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

**Subject**

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

**Reason**

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

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

* * * * *

**Compliance**

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

**Actions**

(g) Within 3,300 flight hours after the effective date of this AD, do a detailed inspection for cracking of the rearward and forward face of the APU firewall, including its attachment to the fuselage, removing neither the structural reinforcements nor the dampers, in accordance with Task 05–20–47–200–801–A (aft of rear pressure bulkhead) and Task 05–20–57–200–801–A (tail cone fairing) of Chapter 5 of EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 53, dated October 28, 2010.

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

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

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

**Optional Terminating Action**

(h) Replacing the APU firewall having P/N 145–47494–401, 145–26850–401, 145–26850–601, or 145–47494–403, with a new APU firewall having P/N 145–47494–607, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0062, Revision 06, dated August 11, 2010, terminates the repetitive inspections required in paragraphs (g)(1) and (g)(2) of this AD.

**Credit for Actions Accomplished in Accordance With Previous Service Information**

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

TABLE 1—CREDIT SERVICE BULLETINS

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

**FAA AD Differences**

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

(1) The MCAI AD does not specify how to do the inspection for cracking. This AD requires doing a detailed inspection of the rearward and forward face of the APU firewall, including its attachment to the fuselage, in accordance with Task 05–20–47–200–801–A (aft of rear pressure bulkhead) and Task 05–20–57–200–801–A (tail cone fairing) of Chapter 5 of EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 53, dated October 28, 2010.

(2) Where Subjects 5–20–47 and 5–20–57 of Chapter 5 of the EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 53, dated October 28, 2010, specify an internal general visual inspection, this AD requires a detailed inspection.

**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, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

**Related Information**

(k) Refer to MCAI ANAC Airworthiness Directive 2010–06–03R1, dated September 20, 2010; EMBRAER Service Bulletin 145–53–0062, Revision 06, dated August 11, 2010; Subjects 5–20–47 and 5–20–57 of Chapter 5 of the EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 53, dated October 28, 2010; and Chapter 53–32–13, Rear Fuselage II—APU Firewall—Repairs, of the EMBRAER EMB135, ERJ140, EMB145, Structural Repair Manual SRM–145/1142, Revision 43, dated December 1, 2010; for related information.

Issued in Renton, Washington, on April 12, 2011.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–9409 Filed 4–18–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–0121; Airspace Docket No. 11–ACE–2]**

## Proposed Amendment of Class E Airspace; Fulton, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Fulton, MO. Decommissioning of the Guthrie non-directional beacon (NDB) at Elton Hensley Memorial Airport, Fulton, MO, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Elton Hensley Memorial Airport.

**DATES:** 0901 UTC. Comments must be received on or before June 3, 2011.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0121/Airspace Docket No. 11–ACE–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0121/Airspace Docket No. 11–ACE–2." The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

### The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Elton Hensley Memorial Airport Airport, Fulton, MO. Airspace reconfiguration is necessary due to the decommissioning of the Guthrie NDB and the cancellation of the NDB approach. Controlled airspace is

necessary for the safety and management of IFR operations at the airport.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Elton Hensley Memorial Airport Airport, Fulton, MO.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA 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.*

* * * * *

**ACE MO E5 Fulton, MO [Amended]**

Fulton, Elton Hensley Memorial Airport, MO (Lat. 38°50′17″ N., long. 92°00′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Elton Hensley Memorial Airport.

Issued in Fort Worth, TX, on April 7, 2011.

**Richard J. Kervin, Jr.,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–9380 Filed 4–18–11; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2010–0609; Airspace Docket No. 10–AGL–9]**

## Proposed Amendment of Class E Airspace; Drummond Island, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Drummond Island, MI. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures at Drummond Island Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** 0901 UTC. Comments must be received on or before June 3, 2011.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0609/Airspace Docket No. 10–AGL–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0609/Airspace Docket No. 10–AGL–9." The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and

phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Drummond Island Airport, Drummond Island, MI. Adjustments to the geographic coordinates for the airport also would be made in accordance with the FAA's aeronautical database. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

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

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA 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.*

* * * * *

**AGL MI E5 Drummond Island, MI [Amended]**

Drummond Island Airport, MI
(Lat. 46°00′34″ N., long. 83°44′38″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Drummond Island Airport, and within 4 miles each side of the 072° bearing from the airport extending from the 7-mile radius to 8.5 miles east of the airport; that airspace extending upward from 1,200 feet above the surface bounded by long. 83°57′00″ W., on the west; long. 83°26′00″ W., on the east; lat. 46°05′00″ N., on the north; and lat. 45°45′00″ N., on the south, excluding that airspace within Canada.

Issued in Fort Worth, TX, on April 7, 2011.

**Richard J. Kervin, Jr.,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–9400 Filed 4–18–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2011–0213; Airspace Docket No. 11–ACE–4]**

## Proposed Amendment of Class E Airspace; El Dorado, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at El Dorado, KS. Decommissioning of the El Dorado non-directional beacon (NDB) at Captain Jack Thomas/El Dorado Airport, El Dorado, KS, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Captain Jack Thomas/El Dorado Airport.

**DATES:** 0901 UTC. Comments must be received on or before June 3, 2011.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0213/Airspace Docket No. 11–ACE–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0213/Airspace Docket No. 11–ACE–4." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

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

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Captain Jack Thomas/El Dorado Airport, El Dorado, KS. Airspace reconfiguration is necessary due to the decommissioning of the El Dorado NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

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

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA 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.*

* * * * *

**ACE KS E5 El Dorado, KS [Amended]**

Captain Jack Thomas/El Dorado Airport, KS (Lat. 37°46′27″ N., long. 96°49′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Captain Jack Thomas/El Dorado Airport.

Issued in Fort Worth, TX, on April 7, 2011.

**Richard J. Kervin, Jr.,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–9377 Filed 4–18–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–0134; Airspace Docket No. 11–AGL–3]**

## Proposed Amendment of Class E Airspace; Mobridge, SD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Mobridge, SD. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Mobridge Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** 0901 UTC. Comments must be received on or before June 3, 2011.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0134/Airspace Docket No. 11–AGL–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments

received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0134/Airspace Docket No. 11–AGL–3." The postcard will be date/time stamped and returned to the commenter.

## Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

## The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Mobridge Municipal Airport, Mobridge, SD. Controlled airspace is needed for the safety and management of IFR operations at the airport. Geographic coordinates also would be updated to be in concert with the FAAs aeronautical database.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

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

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA 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.*

* * * * *

**AGL SD E5 Mobridge, SD [Amended]**

Mobridge Municipal Airport, SD
(Lat. 45°32′47″ N., long. 100°24′23″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Mobridge Municipal Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°18′01″ N., long. 99°49′34″ W., to lat. 45°07′23″ N., long. 100°49′24″ W., to lat. 45°13′27″ N., long. 100°52′40″ W., to lat. 45°19′10″ N., long. 100°27′43″ W., to lat. 45°25′14″ N., long. 100°30′08″ W., to lat. 45°32′37″ N., long. 100°50′33″ W., to lat. 45°35′38″ N., long. 100°59′28″ W., to lat. 45°46′53″ N., long. 100°57′50″ W., to lat. 45°50′09″ N., long. 100°48′32″ W., to lat. 45°59′25″ N., long. 100°36′07″ W., to lat. 46°05′11″ N., long. 100°40′41″ W., to lat. 46°11′00″ N., long. 100°26′01″ W., to lat. 46°05′28″ N., long. 100°19′58″ W., to lat. 45°32′07″ N., long. 99°57′01″ W., to the point of beginning.

Issued in Fort Worth, TX, on April 4, 2011.

**Richard J. Kervin,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–9395 Filed 4–18–11; 8:45 am]

BILLING CODE 4901–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2011–0251; Airspace Docket No. 11–ACE–5]**

## Proposed Amendment of Class E Airspace; Harrisonville, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Harrisonville, MO. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Lawrence Smith Memorial Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** 0901 UTC. Comments must be received on or before June 3, 2011.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0251/Airspace Docket No. 11–ACE–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0251/Airspace Docket No. 11–ACE–5." The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

### The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Lawrence Smith Memorial Airport, Harrisonville, MO. Controlled airspace is needed for the safety and management of IFR operations at the airport. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

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

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA 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.*

* * * * *

**ACE MO E5 Harrisonville, MO [Amended]**

Lawrence Smith Memorial Airport, MO
(Lat. 38°36′37″ N., long. 94°20′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Lawrence Smith Memorial Airport, and within 1.9 miles each side of the 307° bearing from the airport extending from the 6.9-mile radius to 10.3 miles northwest of the airport.

Issued in Fort Worth, TX, on April 7, 2011.

**Richard J. Kervin, Jr.,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–9391 Filed 4–18–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–0214; Airspace Docket No. 11–ASW–2]**

## Proposed Establishment of Class E Airspace; Hearne, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Hearne, TX. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Hearne Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** 0901 UTC. Comments must be received on or before June 3, 2011.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0214/Airspace Docket No. 11–ASW–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0214/Airspace Docket No. 11–ASW–2." The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

### The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Hearne Municipal Airport, Hearne, TX. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

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

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA 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.*

* * * * *

**ASW TX E5 Hearne, TX [New]**

Hearne Municipal Airport, TX
(Lat. 30°52′20″ N., long. 96°37′20″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Hearne Municipal Airport, and within 2 miles each side of the 002° bearing from the airport extending from the 7.1-mile radius to 10.9 miles north of the airport, and within 2 miles each side of the 182° bearing from the airport extending from the 7.1-mile radius to 11.9 miles south of the airport.

Issued in Fort Worth, TX, on April 7, 2011.

**Richard J. Kervin, Jr.,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–9379 Filed 4–18–11; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2011–0244 Airspace Docket No. 11–AAL–05]**

### Proposed Revision of Class E Airspace; Yakutat, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to revise Class E airspace at Yakutat, AK. The revision of eight Standard Instrument Approach Procedures (SIAPs) at the Yakutat Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

**DATES:** Comments must be received on or before June 3, 2011.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0244/Airspace Docket No. 11–AAL–05 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0244/Airspace Docket No. 11–AAL–05." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace the Yakutat Airport, in Yakutat, AK, to accommodate the revision of eight SIAPs at the Yakutat Airport. This Class E airspace would provide adequate controlled airspace upward from 700 feet and 1,200 feet above the surface, for the safety and management of IFR operations at the Yakutat Airport. The 1,200 ft. airspace extends over Control Area 1487L and that airspace will be amended in a future rule-making action.

The Class E airspace areas designated as 700/1,200 foot transition areas and the Offshore Airspace Areas are published in paragraphs 6005 and 6007, respectively, in FAA Order 7400.9U,

Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The airspaces listed in this document would be subsequently published in that Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Yakutat Airport, Yakutat, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

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

1. The authority citation for 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 Federal Aviation Administration Order 7400.9U, *Airspace Designations and Reporting Points,* signed August 18, 2010, and effective September 15, 2010, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Yakutat, AK [Revised]**

Yakutat Airport, AK
(Lat. 59°30′12″ N., long. 139°39′37″ W.)
Yakutat VORTAC
(Lat. 59°30′39″ N., 139°38′53″ W.)

That airspace extending upward from 700 feet above the surface within the area bounded by lat. 59°47′42″ N., long., 139°58′48″ W., to lat. 59°37′33″ N., long 139°40′53″ W., then along the 7 mile radius of the Yakutat VORTAC clockwise to 59°28′54″ N., long. 139°25′35″ W., to lat. 59°20′16″ N., long. 139°10′20″ W., to lat. 59°02′49″ N. long. 139°47′45″ W., to lat. 59°30′15″ N. long. 140°36′43″ W., to the point of beginning; and that airspace extending upward from 1,200 feet above the surface with a 75-mile radius of the Yakutat VORTAC.

Issued in Anchorage, AK, April 7, 2011.

**Michael A. Tarr,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. 2011–9398 Filed 4–18–11; 8:45 am]

BILLING CODE 4910–13–P

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## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Parts 370 and 382

**[Docket No. RM 2011–5]**

## Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Royalty Judges are proposing to amend their regulations to provide reporting of uses of sound recordings performed by means of digital audio transmissions pursuant to statutory license for the period April 1, 2004, through December 1, 2009.

**DATES:** Comments are due no later than May 19, 2011.

**ADDRESSES:** Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

**FOR FURTHER INFORMATION CONTACT:** Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Copyright Act grants copyright owners of sound recordings the exclusive right to perform their works publicly by means of digital audio transmissions subject to certain limitations and exceptions. Among the limitations placed on the performance right for sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio services, and business establishment services to perform those sound recordings publicly by means of digital audio transmissions. 17 U.S.C. 114.

Similarly, copyright owners of sound recordings are granted the exclusive right to make copies of their works subject to certain limitations and exceptions. Among the limitations placed on the reproduction right for sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio services, and business establishment services to make ephemeral copies of those sound recordings to facilitate their digital transmission. 17 U.S.C. 112(e).

Both the section 114 and 112 licenses require services to, among other things,

pay royalty fees and to report to copyright owners of sound recordings on the use of their works. Both licenses direct the Copyright Royalty Judges ("Judges") to determine the royalty rates to be paid, 17 U.S.C. 114(f)(1)(A), (f)(2)(A) and 17 U.S.C. 112(e)(3), and to establish regulations to give copyright owners reasonable notice of the use of their works and create and maintain records of use for delivery to copyright owners. 17 U.S.C. 114(f)(4)(A) and 17 U.S.C. 112(e)(4). The royalty fees collected under the section 114 and 112 licenses, as determined by the Judges,[1] are paid to a central source known as a Collective.[2] See 37 CFR Part 370. The purpose of the notice and recordkeeping requirement is to ensure that the royalties collected under the statutory licenses are distributed by the Collective, or other agents designated to receive royalties from the Collective, to the correct recipients. To this end, on October 13, 2009, the Judges published final regulations specifying notice and recordkeeping requirements for use of sound recordings under the section 114 and 112 licenses.[3] See 74 FR 52418.

**SoundExchange Petition for Rulemaking**

On March 24, 2011, SoundExchange petitioned the Judges to commence a rulemaking proceeding to consider adopting regulations to authorize SoundExchange "to use proxy reporting data to distribute to copyright owners and performers certain sound recording royalties [collected by SoundExchange] for periods before 2010 that are otherwise undistributable due to licensees' failure to provide reports of use" or their provision of "reports of use that are so deficient as to be unusable." Petition of SoundExchange, Inc. for a Rulemaking to Authorize Use of a Proxy to Distribute Certain Pre-2010 Sound Recording Royalties at 1 and 2 (March 24, 2011) (footnotes omitted). SoundExchange states that it has "expended considerable effort" to work with licensees to bring them into compliance with their reporting obligations, *id.* at 2, and will continue its efforts to obtain reporting data for the pre-2010 period. SoundExchange asserts that despite these efforts, it is "approaching the point at which further efforts would either be futile or unreasonably costly." *Id.* SoundExchange holds approximately $28 million in royalties paid by statutory licensees under sections 114 and 112 for the period April 1, 2004, to December 31, 2009, that should be paid to copyright owners and performers. This pool represents 4.5% of the royalties SoundExchange has collected for that period. *Id.* However, these royalties are not distributable due to licensees' failure to provide reports of use as required or their provision of unusable reports. *Id.* Consequently, SoundExchange asserts that such royalties can "reasonably" be distributed to copyright owners and performers only by use of a proxy.

In support of its request, SoundExchange points out that a proxy has been utilized once before when the lack of reports of use rendered the reasonable distribution of royalties difficult if not impossible. There, reporting data did not exist for the period October 1998 (when the statutory licenses first became available for services other than preexisting subscription services) to March 2004 (when interim recordkeeping regulations were promulgated).[4] In order to allow for the distribution of those royalties, the reports of use submitted by preexisting subscription services for the October 1998 to March 2004 timeframe were used as a proxy for all other services operating under the section 114 and section 112 licenses, thereby negating the need for submission of additional reports of use by nonsubscription services, satellite digital audio radio services, new subscription services or business establishment services. *See Notice and Recordkeeping for Use of Sound Recordings Under Statutory License, Docket No. RM 2002–1G, Final rule,* 69 FR 58261 (September 30, 2004). The Copyright Office stated that use of such proxy data was not a perfect solution in that context but was the "optimal method to ensure that royalties collected for the [October 1998 to March 2004 timeframe] [were] equitably distributed * * * with minimal delay, cost, and effort." 69 FR 42009 (September 30, 2004).

SoundExchange contends that a similar approach is warranted now. Namely, SoundExchange states that it has "reduced the pool of [undistributable] royalties * * * due to missing reports of use to a point such that in the near future '[t]he likelihood of obtaining any useful and meaningful data' from non-reporting services would be 'small.'" SoundExchange Petition at 3. Consequently, SoundExchange proposes using proxy reports of use. Specifically, SoundExchange seeks to use "available data for services of the same license type, for the same year," which SoundExchange believes should result in a "much more accurate distribution" than the distribution for the October 1998 to March 2004 period. *Id.* at 9 (emphasis in original). For example, for business establishment services which fail to submit reports of use as required under the applicable regulations, SoundExchange would use reports of use submitted by other business establishment services for the same calendar year and distribute royalties from non-submitting services in proportion to the distribution of royalties from submitting services. *Id.*

SoundExchange also proposes technical corrections to part 382 to reflect the renumbering of certain sections in Part 370 when the Judges adopted their final notice and recordkeeping regulations in October 2009.

**Solicitation of Comments on the Proposed Regulations**

The Judges seek comment from interested parties on SoundExchange's proposal regarding the use of a proxy for the distribution of royalties collected under the section 114 and 112 licenses for the period April 1, 2004, through December 31, 2009. In addition to general comments regarding the proposal, the Judges seek comments on the following areas:

1. Has SoundExchange exhausted all reasonable means to ensure that all undistributed royalties for the period from April 1, 2004, through December 31, 2009, have been distributed to the party that earned those royalties? If not, what other means could SoundExchange use to facilitate further distributions without resorting to proxy reports of use?

2. Assuming that SoundExchange has exhausted all reasonable means of distributing royalties to the parties who earned them, is the proposed use of proxy reports a fair and appropriate means of distributing remaining royalties for this period? If not, what would be a better alternative?

3. SoundExchange proposes using proxy reports of use based on available data for services of the same type, for the same year. Where no such proxy reports are available for the same type of service for the same year, is a default proxy based on an aggregate of the reports of other services covered by the license a fair and appropriate means of

[1] To date, the Judges have determined royalty rates for the license periods 2006–2010 and 2011–2015. See 72 FR 24084 (May 1, 2007) and 76 FR 13026 (March 9, 2011).

[2] SoundExchange, Inc., originally created by the Recording Industry Association of America, Inc., is currently the Collective for receiving both section 112 and 114 royalties, and it (and its predecessor) has been the Collective since the inception of the two licenses.

[3] Until that time, interim regulations were in effect. See 71 FR 59010 (October 6, 2006).

[4] Prior to May 31, 2005, the statutory licenses were administered by the Copyright Office under the Copyright Arbitration Royalty Panel ("CARP") system. The Copyright Royalty Distribution Reform Act of 2004 replaced the CARP system with the Copyright Royalty Judges.

distributing royalties for this period. If not, what would be a better alternative?

4. Is the disaggregation by type of service proposed in § 370.4(f) (i.e., nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service, or business establishment service) sufficient to determine a reasonable proxy for generating corresponding reports of use for similar types of non-reporting services?

Is further disaggregation of some service types, as currently referenced in 37 CFR Part 380 (e.g., disaggregation of nonsubscription transmission services into commercial webcasters, noncommercial webcasters, broadcasters, or noncommercial educational webcasters) desirable to determine a better proxy for generating corresponding reports of use for such non-reporting services? Would this type of further disaggregation be practicable? Would the benefits yielded by such further disaggregation, if any, justify the incremental costs of doing so?

5. Does the proposed regulatory language in §§ 370.3(i) and 370.4(f) (i.e., "* * * service has not provided a report of use required under this section * * *") clearly encompass both the failure of a service to provide reports of use as well as instances where the service files an unusable report of use?

SoundExchange's petition is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb/3-24-11-SoundExchange-petition-proxy.pdf.*

**List of Subjects**

*37 CFR Part 370*

Copyright, Sound recordings.

*37 CFR Part 382*

Copyright, Digital audio transmissions, Performance right, Sound recordings.

**Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Royalty Judges propose amending 37 CFR parts 370 and 382 as follows:

## PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

1. The authority citation for part 370 continues to read as follows:

**Authority:** 17 U.S.C. 112(e)(4), 114(f)(4)(A).

2. Section 370.3 is amended by adding new paragraph (i) to read as follows:

### § 370.3 Reports of use of sound recordings under statutory license for preexisting subscription services.

* * * * *

(i) In any case in which a preexisting subscription service has not provided a report of use required under this section for use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, prior to January 1, 2010, reports of use for the corresponding calendar year filed by other preexisting subscription services shall serve as the reports of use for the non-reporting service, solely for purposes of distribution of any corresponding royalties by the Collective.

3. Section 370.4 is amended by adding new paragraph (f) to read as follows:

### § 370.4 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.

* * * * *

(f) In any case in which a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service, or business establishment service has not provided a report of use required under this section for use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, prior to January 1, 2010, reports of use for the corresponding calendar year filed by other services of the same type shall serve as the reports of use for the non-reporting service, solely for purposes of distribution of any corresponding royalties by the Collective.

## PART 382—RATES AND TERMS FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES

4. The authority citation of part 382 continues to read as follows:

**Authority:** 17 U.S.C. 112(e), 114, and 801(b)(1).

### § 382.3 [Amended]

5. Section 382.3(c)(1) is amended by removing "§ 370.2" and adding "§ 370.3" in its place.

### § 382.13 [Amended]

6. Section 382.13(f)(1) is amended by removing "§ 370.3" and adding "§ 370.4" in its place.

Dated: April 14, 2011.

**James Scott Sledge,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. 2011–9455 Filed 4–18–11; 8:45 am]

BILLING CODE 1410–72–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R08–OAR–2007–1037; FRL–9297–4]

## Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 $PM_{2.5}$ and 8-Hour Ozone NAAQS: "Significant Contribution," "Interference with Maintenance," and "Interference with Prevention of Significant Deterioration" Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve portions of a State Implementation Plan (SIP) revision submitted by the State of Colorado for the purpose of addressing the "good neighbor" provisions of Clean Air Act ("Act" or "CAA") section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standards ("NAAQS" or "standards") and the 1997 fine particulate matter ("$PM_{2.5}$") NAAQS. This SIP revision addresses the requirement that the State of Colorado's SIP ("Interstate Transport SIP") have adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. In this action, EPA is proposing to approve the Colorado Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i) that emissions from Colorado sources do not significantly contribute to nonattainment of the 1997 $PM_{2.5}$ NAAQS in any other state, interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS by any other state, or interfere with any other state's required measures to prevent significant deterioration of air quality for the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS. This action is being taken under section 110 of the CAA.

**DATES:** Comments must be received on or before May 19, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–1037, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: clark.adam@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Deborah Lebow Aal, Acting Director, Air Program, Environmental

Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Deborah Lebow Aal, Acting Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R08–OAR–2007–1037. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *Colorado* and *State* mean the State of Colorado.

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## I. General Information

### *What should I consider as I prepare my comments for EPA?*

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

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

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

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

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

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

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

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

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

## II. What proposed action is EPA taking?

EPA is proposing to approve a portion of Colorado's Interstate Transport SIP revision for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. This revision was submitted by the State on March 31, 2010.[1] Specifically, we are proposing to approve the portion of the plan that addresses the following requirements of CAA section 110(a)(2)(D)(i) which prohibit air pollutant emissions within the State that: (1) Significantly contribute to nonattainment of the 1997 $PM_{2.5}$ NAAQS in any other state; (2) interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS by any other state; and (3) interfere with any other state's required measures to prevent significant deterioration of its air quality with

[1] The March 31, 2010 submission superseded earlier SIP submissions with respect to the section 110(a)(2)(D)(i) requirements that are the subject of this proposed action.

respect to the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS.

## III. What is the background for this proposed action?

On July 18, 1997, EPA promulgated new NAAQS for ozone and for $PM_{2.5}$. This action is being taken in response to the promulgation of both the 1997 ozone and $PM_{2.5}$ NAAQS. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" ("2006 Guidance").[2] The 2006 Guidance recommends ways states may, in their submissions, meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ standards.

As identified in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with required measures to prevent significant deterioration of air quality in any other state; or (4) interfere with efforts to protect visibility in any other state. In this rulemaking EPA is addressing the first three requirements of section 110(a)(2)(D)(i).

On June 11, 2008, the State of Colorado submitted to EPA an Interstate Transport SIP addressing all four requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. In response to EPA's concerns regarding the June 11, 2008 submission, the State later submitted two superseding interstate transport SIP revisions: (a) A June 18, 2009 submission addressing requirements (1) and (2) of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS; and (b) a March 31, 2010 submission addressing requirements (3) and (4) for the 1997 8-hour ozone NAAQS and requirements (1) through (4) for the 1997 $PM_{2.5}$ NAAQS. EPA has previously approved the "significant contribution to nonattainment" and the "interfere with maintenance" requirements for the State of Colorado for the 1997 8-hour ozone NAAQS in final rule actions published June 3 and November 22, 2010 (75 FR 31306; 75 FR 71029). EPA proposed approval of the "interfere with visibility" requirement for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS on February 14, 2011 (76 FR 8326). In this rulemaking EPA is evaluating only the portions of Colorado's March 31, 2010 submission that address requirements (1), (2), and (3) for the 1997 $PM_{2.5}$ NAAQS, and requirement (3) for the 1997 8-hour ozone NAAQS. In its submission, the State indicated that its current SIP already contains provisions adequate to prevent such contribution and interference. EPA is proposing to find that, as stated by Colorado in the March 31, 2010 submission, the Colorado Interstate Transport SIP has adequate provisions addressing requirements (1), (2), and (3) of section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS and requirement (3) for the 1997 8-hour ozone NAAQS.

## IV. What is the state process to submit these materials to EPA?

Section 110(k) of the CAA addresses EPA's rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submission to EPA. Sections 110(a)(1) and (2) of the CAA require that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

The Colorado Air Quality Control Commission (AQCC) held a public hearing in December 2009 for the Interstate Transport SIP revision: "State of Colorado Implementation Plan To Meet the Requirements of the Clean Air Act Section 110(a)(2)(D)(i)(I) and (II)—Regarding Interstate Transport for the 1997 8-Hour Ozone and $PM_{2.5}$ NAAQS." The AQCC adopted this revision on January 13, 2010, and the State submitted it to EPA on March 31, 2010. As discussed above, the March 31, 2010 submission addresses the elements of 110(a)(2)(D)(i) that are the subject of this proposed action.

EPA has reviewed the March 31, 2010, submission from the State of Colorado and has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(1) and (2) of the CAA.

## V. EPA's Review and Technical Information

EPA is evaluating the State's submission in light of the statutory requirements of section 110(a)(2)(D)(i). In particular, section 110(a)(2)(D)(i)(I) requires that a SIP contain provisions adequate to prevent emissions from sources in that state from contributing significantly to nonattainment of the relevant NAAQS, or interfering with maintenance of the relevant NAAQS, in any other state. Section 110(a)(2)(D)(i)(II) contains a similar requirement that a SIP contain provisions adequate to prevent emissions from sources in the state from interfering with measures required to prevent significant deterioration of air quality in any other state.

To assist states with SIP submissions for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, EPA issued the 2006 Guidance to make recommendations with respect to all four requirements of section 110(a)(2)(D)(i). More recently, EPA has proposed a rule ("Transport Rule Proposal") addressing the "significant contribution to nonattainment" and "interfere with maintenance" requirements of 110(a)(2)(D)(i) for many states located in the eastern United States.[3] Although Colorado is not among the states that EPA is considering for inclusion within the geographic region that may be covered by the final rule that will be based upon the Transport Rule Proposal, EPA is using a comparable approach to evaluate the emissions from sources in Colorado, as well as considering certain data developed to support the Transport Rule Proposal as discussed in more detail below, as part of evaluating the issue of interstate transport from Colorado for the first two requirements. For the third requirement, EPA is evaluating the SIP submission from the state in light of the recommendations contained in the Agency's prior 2006 guidance document and in light of other subsequent actions as discussed below.

[2] Memorandum from William T. Harnett entitled, "Guidance for State Implementation Plan (SIP) Submissions To Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (Aug. 15, 2006).

[3] "Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone," 75 FR 45210 (Aug. 2, 2010).

*A. Background on Section 110(a)(2)(D)(i)(I)*

The first two elements of section 110(a)(2)(D)(i) require states to have SIPs with adequate provisions to prevent any source or other type of emissions activity within the state from emitting air pollutants in amounts that will "contribute significantly" to nonattainment in other states or will "interfere with maintenance" of the NAAQS by any other state. The terms "contribute significantly" and "interfere with maintenance" are not defined in the statute. Therefore, EPA has interpreted these terms in past regulatory actions addressing interstate transport, such as the 1998 $NO_X$ SIP Call, in which EPA took action to eliminate emissions of $NO_X$ that significantly contributed to nonattainment, or interfered with maintenance of, the then applicable ozone NAAQS through interstate transport of $NO_X$ and the resulting ozone.[4] The $NO_X$ SIP Call was the mechanism through which EPA evaluated whether or not the $NO_X$ emissions from sources in certain states had such prohibited interstate impacts, and if they had such impacts, required the states to adopt substantive SIP revisions to eliminate the $NO_X$ emissions, whether through participation in a regional cap and trade program or by other means.

After promulgation of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, EPA again recognized that regional transport was a serious concern throughout the eastern U.S. and therefore developed the 2005 Clean Air Interstate Rule (CAIR) to address emissions of $SO_2$ and $NO_X$ that exacerbate ambient ozone and $PM_{2.5}$ levels in many downwind areas through interstate transport.[5] Within CAIR, EPA likewise interpreted the terms "contribute significantly" and "interfere with maintenance" as part of the evaluation of whether or not the emissions of sources in certain states had such impacts on areas that EPA determined would either be in violation of the NAAQS, or would be in jeopardy of violating the NAAQS, in a modeled future year unless actions were taken by upwind states to reduce $SO_2$ and $NO_X$ emissions. Through CAIR, EPA again required states that had such interstate impacts to adopt substantive SIP revisions to eliminate the $SO_2$ and $NO_X$ emissions, whether through participation in a regional cap and trade program or by other means.

EPA's 2006 Guidance addressed section 110(a)(2)(D)(i) requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. For those states subject to CAIR, EPA indicated that compliance with CAIR would meet the two requirements of section 110(a)(2)(D)(i)(I) for these NAAQS. For states not within the CAIR region, EPA recommended that states evaluate whether or not emissions from their sources would "contribute significantly" or "interfere with maintenance" in other states, following the conceptual approach adopted by EPA in CAIR. After recommending various types of information that could be relevant for the technical analysis to support the SIP submission, such as the amount of emissions and meteorological conditions in the state, EPA further indicated that it would be appropriate for the state to assess impacts of its emissions on other states using considerations comparable to those used by EPA "in evaluating significant contribution to nonattainment in the CAIR."[6] EPA did not make specific recommendations for how states should assess "interfere with maintenance" separately, and discussed the first two elements of section 110(a)(2)(D) together without explicitly differentiating between them.

In 2008, however, the U.S. Court of Appeals for the D.C. Circuit found that CAIR and the related CAIR federal implementation plans were unlawful.[7] Among other issues, the court held that EPA had not correctly addressed the second element of section 110(a)(2)(D)(i)(I) in CAIR. The court noted that "EPA gave no independent significance to the 'interfere with maintenance' prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance."[8] EPA's approach, the court reasoned, would leave areas that are "barely meeting attainment" with "no recourse" to address upwind emissions sources.[9] The court therefore concluded that a plain language reading of the statute requires EPA to give independent meaning to the interfere with maintenance requirement of section 110(a)(2)(D) and that the approach used by EPA in CAIR failed to do so.

In addition to affecting CAIR directly, the court's decision in the North Carolina case indirectly affects EPA's recommendations to states in the 2006 Guidance with respect to the interfere with maintenance element of section 110(a)(2)(D)(i)(I) because the agency's guidance suggested that states use an approach comparable to that used by EPA in CAIR. States such as Colorado developed and adopted their Interstate Transport SIPs not long after the Court's July 2008 decision, but well before EPA, in the Transport Rule Proposal (*see* below), was able to propose a new approach for the interference with maintenance element. Without recommendations from EPA, Colorado's SIP may not have sufficiently differentiated between the significant contribution to nonattainment and interference with maintenance elements of the statute, and relied in a general way on the difference between monitored concentrations and the 1997 $PM_{2.5}$ NAAQS to evaluate the impacts of State emissions on maintenance of the NAAQS in other states. It is necessary to evaluate these state submissions for section 110(a)(2)(D)(i)(I) in such a way as to assure that the interfere with maintenance element of the statute is given independent meaning and is appropriately evaluated using the types of information that EPA recommended in the 2006 Guidance. To accomplish this, it is necessary to use an updated approach to this issue and to supplement the technical analysis provided by the State in order to evaluate the submissions with respect to both the significant contribution and the interfere with maintenance elements of section 110(a)(2)(D)(i)(I).

EPA has recently proposed a new rule, the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" ("Transport Rule Proposal"), in order to address interstate transport under section 110(a)(2)(D)(i)(I) and the judicial remand of CAIR.[10] As part of the Transport Rule Proposal, EPA specifically reexamined the section 110(a)(2)(D)(i)(I) requirement that emissions from sources in a state must not "interfere with maintenance" of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS by other states. In the proposal, EPA developed an approach to identify areas that it predicts to be close to the level of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in the future, and therefore at risk to become or continue to be nonattainment

[4] *See,* 63 FR 57356 (Oct. 27, 1998). EPA's general approach to section 110(a)(2)(D) was upheld in *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000), cert. denied, 532 U.S. 904 (2001). However, EPA's approach to interference with maintenance in the $NO_X$ SIP Call was not explicitly reviewed by the court. *See, North Carolina* v. *EPA,* 531 F.3d 896, 907–09 (DC Cir. 2008).

[5] *See,* 70 FR 25162 (May 12, 2005).

[6] 2006 Guidance at 5.

[7] *See, North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008).

[8] *Id.* at 909.

[9] *Id.*

[10] 75 FR 45210 (Aug. 2, 2010).

for these NAAQS unless emissions from sources in other states are appropriately controlled. This approach starts by identifying those specific geographic areas for which further evaluation is appropriate and differentiating between areas where the concern is with interference with maintenance with those where the concern is with significant contribution to nonattainment.

As described in more detail below, EPA's Transport Rule analysis evaluates data from existing monitors over three overlapping three-year periods (i.e., 2003–2005, 2004–2006, and 2005–2007), as well as air quality modeling data, in order to determine which areas are predicted to be violating the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in 2012, and which areas are predicted potentially to have difficulty with maintaining attainment as of that date. In essence, if an area's projected data for 2012 indicates that it would be violating the NAAQS based on the average of these three overlapping periods, then this monitor location is appropriate for comparison for purposes of the significant contribution to nonattainment element of section 110(a)(2)(D)(i). If, however, an area's projected data indicate that it would be violating the NAAQS based on the highest single three year period, but not over the average of the three periods, then this monitor location is appropriate for comparison for purposes of the interfere with maintenance element of the statute.

For the $PM_{2.5}$ NAAQS, EPA evaluated concentrations of both the annual $PM_{2.5}$ NAAQS and the 24-hour $PM_{2.5}$ NAAQS. The 1997 annual $PM_{2.5}$ NAAQS is met when the 3-year average of the annual mean concentration is 15.0 micrograms per cubic meter (μg/m$^3$) or less. The 3-year average annual mean concentration is computed at each site by averaging the daily Federal Reference Method (FRM) samples by quarter, averaging these quarterly averages to obtain an annual average, and then averaging the three annual averages to get the design value. The 1997 24-hour $PM_{2.5}$ NAAQS is met when the 3-year average of the annual 98th percentiles is 65 μg/m$^3$ or less.[11] The 3-year average mean 98th percentile concentration is computed at each site by averaging the 3 individual annual 98th percentile values at each site. The 3-year average 98th percentile concentration is referred to as the 24-hour average design value.

To project future annual $PM_{2.5}$ design values, EPA relied on monitoring data from the AQS combined with photochemical air quality modeling results. The Transport Rule Proposal generates the projected future $PM_{2.5}$ values based on an average of three design value periods which include the years 2003–2007 (i.e., design values for 2003–2005, 2004–2006, and 2005–2007). The average of the three design values creates a 5-year "weighted average" value. The 5-year weighted average values were then projected to the future years that were analyzed for the Transport Rule Proposal.[12] EPA used the 5-year weighted average concentrations to project concentrations anticipated in 2012 to determine which monitoring sites are expected to be nonattainment in this future year. EPA also projected 2012 design values based on each of the three base design value year periods (i.e., 2003–2005, 2004–2006, and 2005–2007). The highest future projection is referred to as the "maximum design value" and gives an indication of potential variability in future projections due to differences in actual meteorology and emissions from what was modeled.

EPA then used these weighted averages and maximum design values to identify nonattainment and maintenance receptors. For the 1997 annual $PM_{2.5}$ NAAQS, EPA defined nonattainment receptors as those sites with an annual $PM_{2.5}$ 5-year weighted average concentration (average design value) above 15.05 μg/m$^3$ in 2012. EPA then defined as maintenance receptors those sites that are projected to be attainment based on the 5-year weighted average design value, but that have a maximum design value (based on a projected single three year period) above 15.05 μg/m$^3$ in 2012. These maintenance sites are attaining the NAAQS based on the projected average design values, but EPA anticipates that there will be more difficulty in maintaining attainment of the NAAQS at these locations if there are adverse variations in meteorology or emissions.

By this method, EPA has identified those areas—the nonattainment receptors—that are appropriate for evaluating whether emissions from sources in another state could significantly contribute to nonattainment. Likewise, EPA has identified those areas—the maintenance receptors—that are appropriate for evaluating whether the emissions from sources in another state could interfere with maintenance. EPA then uses a "weight-of-evidence" analysis, separate from that used in the Transport Rule Proposal, to examine the potential impacts of emissions from upwind states on these nonattainment and maintenance receptors in downwind states. This proposed approach for identifying those areas that are predicted to have nonattainment or maintenance problems is appropriate to evaluate the section 110(a)(2)(D)(i) SIP submission of a state for the significant contribution and interfere with maintenance elements. EPA's 2006 Guidance did not provide this specific recommendation to states, but in light of the court's decision on CAIR, EPA will itself follow this approach in acting upon the Colorado submission.

As explained in the 2006 Guidance, section 110(a)(2)(D)(i) SIP submissions from all states do not necessarily need to follow precisely the same analytical approach as CAIR. In the 2006 Guidance, EPA stated that: "EPA believes that the contents of the SIP submission required by section 110(a)(2)(D)(i) may vary depending upon the facts and circumstances related to the specific NAAQS. In particular, the data and analytical tools available at the time the State develops and submits a SIP for a new or revised NAAQS necessarily affects the contents of the required submission."[13] EPA also indicated in the 2006 Guidance that it did not anticipate that sources in states outside the geographic area covered by CAIR were significantly contributing to nonattainment, or interfering with maintenance, in other states.[14] As noted in the Transport Rule Proposal, the more widespread and serious transport problems in the eastern United States are analytically distinct. For the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, nonattainment and maintenance problems in the western United States are relatively local in nature with only limited impacts from interstate transport.[15] In the Transport Rule Proposal, EPA did not calculate interstate ozone or $PM_{2.5}$ contributions to or from western states, including Colorado.

Accordingly, section 110(a)(2)(D)(i) SIP submissions for states not evaluated in the Transport Rule Proposal may be evaluated using a weight-of-evidence approach that takes into account available relevant information, such as

[11] The 2006 24-hour $PM_{2.5}$ NAAQS, which is not the subject of this action, is met when the 3-year average of the annual 98th percentile $PM_{2.5}$ concentrations is 35 μg/m$^3$ or less.

[12] Transport Rule Proposal, 75 FR at 45246–51. Additional information concerning these weighted averages is provided in the Western States Design Values Memo.

[13] 2006 Guidance at 3.

[14] *Id.* at 5.

[15] Transport Rule Proposal, 75 FR at 45227.

that recommended by EPA in the 2006 Guidance for states outside the area affected by CAIR. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area, the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider whether sources in the state may significantly contribute to nonattainment or interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS in other states. These submissions can rely on modeling when acceptable modeling technical analyses are available, but modeling is not necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a given situation.

*B. EPA's Evaluation of Colorado's Significant Contribution to Nonattainment*

To meet the requirements of section 110(a)(2)(D)(i), the State of Colorado on March 31, 2010 made a submission to EPA addressing all four 110(a)(2)(D)(i) requirements for the 1997 $PM_{2.5}$ NAAQS, and requirements (3) and (4) for the 1997 8-hour ozone NAAQS. The State used many of the methods recommended in the 2006 Guidance. This included consideration of information such as the geographic location of violating areas and meteorological data. The State's submission also considered AQS monitoring data from Colorado and surrounding states. The State's submission concluded that its own analysis "supports the assertion that Colorado does not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 1997 $PM_{2.5}$ NAAQS." [16] In its submission, the State of Colorado further indicated that its current SIP is adequate to prevent such contribution and interference, and therefore no additional reductions would be necessary to prevent such contribution or interference.

Colorado submitted its Interstate Transport SIP before the Transport Rule Proposal was completed and available. Therefore, the State could not have anticipated which nonattainment receptors EPA would consider most appropriate for the analysis of the impact of transport from Colorado's sources on $PM_{2.5}$ levels in other states. In this proposal, EPA therefore conducts additional analysis, using a weight-of-evidence approach separate from that used in the Transport Rule Proposal, to determine if emissions from Colorado sources significantly contribute to nonattainment of the 1997 $PM_{2.5}$ NAAQS in any other state. This analysis considers: (a) Portions of EPA modeling and analysis conducted for the 2005 CAIR and the 2010 Transport Rule Proposal;[17] (b) projections of western nonattainment and maintenance receptors based on Transport Rule modeling; [18] and (c) geographical, topographical and meteorological factors relevant to the potential for pollution transport. None of these factors is by itself determinative of whether emissions from Colorado significantly contribute to nonattainment of the 1997 $PM_{2.5}$ NAAQS in any other state. However, when considered together through the weight-of-evidence approach, the factors provide the basis for a reliable qualitative assessment of significant contribution.

As described in detail above, in the Transport Rule Proposal, EPA projected future concentrations of $PM_{2.5}$ to identify receptors that are expected to be violating the 1997 $PM_{2.5}$ NAAQS in 2012. For the 1997 annual $PM_{2.5}$ NAAQS, the receptors EPA identified in the Transport Rule Proposal nearest to Colorado are located in Chicago, IL to the northeast, East St. Louis, IL to the east, and Birmingham, AL to the southeast.[19] No monitoring sites within the geographic region addressed in the Transport Rule Proposal analysis were projected to be violating the 1997 24-hour $PM_{2.5}$ NAAQS.[20]

Available information indicates that emissions from Colorado are unlikely to contribute significantly to violations of the 1997 annual $PM_{2.5}$ NAAQS in Chicago, IL, in East St. Louis, IL, or in Birmingham, AL. In our rulemaking process for CAIR, EPA modeled the contribution from individual states to counties in the eastern U.S. projected to be nonattainment for the 1997 annual $PM_{2.5}$ NAAQS in 2010. According to this modeling, EPA projected annual $PM_{2.5}$ contributions from Colorado sources to Cook County (Chicago), IL in 2010 to be 0.03 $\mu g/m^3$,[21] which is well below the significance threshold of one percent of the NAAQS (0.15 $\mu g/m^3$ for the 1997 annual $PM_{2.5}$ NAAQS) used in the Transport Rule Proposal. Contributions from Colorado to annual $PM_{2.5}$ emissions in Saint Clair County (East St. Louis), IL in 2010 were modeled to be 0.04 $\mu g/m^3$. Finally, projected contributions from Colorado to annual $PM_{2.5}$ emissions in Jefferson County (Birmingham), AL were modeled to be 0.03 $\mu g/m^3$, also far below the significance threshold. The CAIR Proposal modeling used a 2010 future year assessment versus the 2012 year used in the Transport Rule Proposal, so it is not determinative of significant contribution from Colorado to these receptors, but it does provide an initial piece of evidence for EPA's weight-of-evidence analysis.

Certain portions of the Transport Rule Proposal modeling analysis provide more evidence that emissions of $PM_{2.5}$ or its precursors from Colorado sources are not likely to contribute significantly to the nonattainment receptors (identified above) in Illinois and Alabama, or to any nonattainment receptors located in states further east.[22] EPA did not model the impacts of emissions from Colorado sources on receptors in other states as part of the Transport Rule Proposal. However, Kansas, Nebraska and Oklahoma were among the states whose interstate contribution to annual $PM_{2.5}$ nonattainment receptors in other states EPA did model for the Transport Rule Proposal.[23] None of these three states (Kansas, Oklahoma and Nebraska) was projected to contribute more than 0.09 $\mu g/m^3$ (60% of the significance threshold) to any annual $PM_{2.5}$ nonattainment receptor inside the

[16] *See* "State of Colorado Implementation Plan to Meet the Requirements of the Clean Air Act Section 110(a)(2)(d)(i)(I) and (II)—Regarding Interstate Transport for the 1997 8-Hour Ozone and $PM_{2.5}$ NAAQS" at 46, available in the docket for this action.

[17] Specifically, from CAIR, EPA considers only CAIR Proposal $PM_{2.5}$ zero-out modeling analysis. From the Transport Rule Proposal, EPA considers: (a) Projected annual $PM_{2.5}$ nonattainment receptor locations; (b) projected statewide $SO_2$ and $NO_X$ emission data for Colorado and three states east of Colorado (Kansas, Nebraska, and Oklahoma); and (c) projected downwind contributions to annual $PM_{2.5}$ nonattainment receptors for Kansas, Nebraska, and Oklahoma.

[18] Memorandum from Brian Timin, EPA Office of Air Quality Planning and Standards, "Documentation of Future Year Ozone and Annual $PM_{2.5}$ Design Values for Western States," (Aug. 23, 2010) ("Western States Design Values Memo"), available in the docket for this action.

[19] Transport Rule Proposal, 75 FR at 45247–48 (Table IV.C–7).

[20] *Id.* at 45249–51 (Table IV.C–9).

[21] "Technical Support Document for the Interstate Air Quality Rule Air Quality Modeling Analyses Appendix H, $PM_{2.5}$ Contributions to Downwind Nonattainment Counties in 2010" (Jan. 30, 2004), available in the docket for this action.

[22] Transport Rule Proposal, 75 FR at 45247–48 (Table IV.C–7).

[23] As technical support for the Transport Rule Proposal, all 48 contiguous states were modeled using a horizontal grid resolution of 36 x 36 km. States in the eastern U.S. modeled for contribution in the Transport Rule Proposal, including Kansas, Nebraska and Oklahoma, were also modeled using a finer horizontal grid resolution of 12 x 12 km. Contribution was determined using zero-out modeling.

Transport Rule Proposal domain in 2012.[24]

For the Transport Rule Proposal, EPA projected total emissions for $NO_X$ and $SO_2$, the two major precursors for $PM_{2.5}$, for each of the 48 contiguous states in 2012 and 2014. Colorado's $NO_X$ and $SO_2$ emissions were generally less than or similar to those in Kansas, Oklahoma and Nebraska.[25] Under prevailing meteorological conditions, all three states are typically downwind from Colorado and upwind of the nonattainment receptors in the eastern U.S. Furthermore, emissions from Colorado must travel a greater distance (compared to these three states) to reach nonattainment receptors in the eastern U.S.[26] Though distance by itself is not an obstacle to long range transport of $PM_{2.5}$ and/or its precursors, and therefore by itself not determinative of significant contribution, greater distance provides greater opportunities for $PM_{2.5}$ and precursor dispersion and/or removal from the atmosphere due to the effect of winds or chemical sink processes. In summary, EPA-projected $PM_{2.5}$ precursor emissions from Colorado are lower or similar to those in Kansas, Nebraska or Oklahoma, and, based on geography and meteorology, emissions from these three states are more likely to reach nonattainment receptors in the eastern U.S. than are emissions from Colorado. Therefore, because Kansas, Nebraska and Oklahoma are each well below the significance threshold for contribution for the annual $PM_{2.5}$ NAAQS in the Transport Rule Proposal, Colorado is likely to be even further below the significance threshold. This consideration, along with the 2004 CAIR Proposal modeling, when taken into account under the weight-of-evidence approach, shows that Colorado emissions are very unlikely to contribute significantly to violations of the 1997 annual $PM_{2.5}$ standard at nonattainment receptors in Illinois, Alabama or any states further east.

To assist in the evaluation of whether emissions from a state's sources contribute significantly to nonattainment of the NAAQS in western states, EPA has also developed an analysis identifying monitors projected to be in nonattainment or at risk for maintenance of the NAAQS within a modeling domain that includes the western states. The analysis presented in the memo, "Documentation of Future Year Ozone and Annual $PM_{2.5}$ Design Values for Western States,"[27] ("Western State Design Values Memo") uses model results from the Transport Rule Proposal based on a continental U.S. 36 km grid, which is coarser than the final 12 km grid used in the Transport Rule for the eastern states. Though the 36 km grid is more coarse, EPA considers these modeling results sufficient to determine the appropriate nonattainment and maintenance receptors for analysis of interstate transport from Colorado to other western states. In identifying these receptors, the Western States Design Values Memo takes the same approach as the Transport Rule Proposal (5 year weighted average design values to project 2012 concentrations).[28] For the 1997 annual $PM_{2.5}$ NAAQS, the nonattainment receptors identified in the Memo are all located in southern and central California, and the nonattainment receptor nearest to Colorado is located in San Bernardino, CA.

In the Western States Design Values Memo, EPA did not calculate interstate $PM_{2.5}$ contributions to or from western states. Therefore, EPA is using a weight-of-evidence approach to determine if the emissions from Colorado sources contribute significantly to nonattainment for receptors in San Bernardino, CA, or other nonattainment receptors in California further west. Distance and topography, although not determinative by themselves, indicate that $PM_{2.5}$ transport from Colorado to California is unlikely. The southwestern corner of Colorado is approximately 500 miles from San Bernardino, making distance an obstacle for $PM_{2.5}$ emissions transport. Moreover, the mountainous topography between Colorado's sources and California's nearest nonattainment receptors presents a large obstacle to $PM_{2.5}$ transport. The prevailing wind orientation also provides evidence that Colorado's emissions are unlikely to contribute significantly to nonattainment of the 1997 annual $PM_{2.5}$ NAAQS in California. West of the Continental Divide the prevailing winds generally move from south-westerly, westerly, or north-westerly directions, as indicated by the typical movement of weather systems.

Finally, projected design values presented in the Western States Design Values Memo provide some evidence that significant contribution from Colorado sources to annual $PM_{2.5}$ nonattainment receptors in California is unlikely. The highest projected average $PM_{2.5}$ design value for 2012 in Colorado is 9.36 μg/m$^3$, or 64% of the 1997 annual $PM_{2.5}$ NAAQS.[29] The highest projected average $PM_{2.5}$ design value for 2012 throughout Utah, Arizona and Nevada, the states between Colorado and California, is 12.7 μg/m$^3$, or 84.6% of the NAAQS.[30] Given the distance between Colorado sources and California nonattainment receptors, the intervening mountainous topography, the general west-to-east direction of transport winds in the western U.S., and the low projected $PM_{2.5}$ design values in Colorado and intervening states, the weight-of-evidence makes it reasonable to conclude that Colorado sources are very unlikely to contribute significantly to nonattainment of the 1997 annual $PM_{2.5}$ NAAQS in California.

EPA did not project 2012 design values for the 1997 24-hour $PM_{2.5}$ NAAQS in the Western States Design Values Memo. EPA therefore used the most recent AQS monitoring data to determine the monitor nearest to Colorado with a design value above the 1997 24-hour $PM_{2.5}$ NAAQS. Based on recent monitoring data (2009 design values), the highest 24-hour $PM_{2.5}$ design value in 47 of the 48 states of the continental U.S. (not including California) is 50 μg/m$^3$, which is well below the level of the 1997 24-hour $PM_{2.5}$ NAAQS of 65 μg/m$^3$.[31] In California, the most recent (2009) 24-hour $PM_{2.5}$ design values show that the monitor nearest Colorado that might be violating the 1997 24-hour $PM_{2.5}$ NAAQS is in Bakersfield.[32] Transport of emissions from Colorado sources to $PM_{2.5}$ receptors in Bakersfield is very unlikely, based on a similar weight-of-evidence analysis as for San Bernardino above. Bakersfield is roughly 570 miles from the nearest Colorado border. The topography between Colorado sources and California monitors is largely

[24] Transport Rule Proposal, 75 FR at 45255 (Table IV.C–13).

[25] See "Technical Support Document (TSD) for the Transport Rule Docket ID No. EPA–HQ–OAR–2009–0491. Emission Inventories" at 40–43 (June 2010). Based on these projections, in 2012, Kansas will have higher $NO_X$ (~24%) and $SO_2$ (~35%) emissions than Colorado, Oklahoma will have higher $NO_X$ (~54%) and $SO_2$ (~147%) emissions than Colorado, and Nebraska will have lower $NO_X$ (~23%) and higher $SO_2$ (~94%) emissions than Colorado.

[26] At the shortest possible distance for each measurement, the eastern Colorado border is approximately 320 miles west of the eastern Nebraska border, 370 miles west of the eastern Kansas border, and 410 miles west of the eastern Oklahoma border. It should be noted that the measured distance represents that of the straight (and shortest) path, which does not reflect the more circuitous paths typically followed by air parcels.

[27] Supra n. 18.

[28] *Id.* at 5.

[29] Western States Design Values Memo, Appendix A.

[30] *Id.*

[31] Data from EPA's Air Quality System, which is EPA's repository of ambient air quality data. (*See http://www.epa.gov/ttn/airs/airsaqs/*).

[32] The AQS design value data shows 2009 design values in Bakersfield of roughly 70 μg/m$^3$.

mountainous, presenting an obstacle to transport of emissions. Winds typically travel west to east in the western United States, making transport of emissions from Colorado to California unlikely. Under the weight-of-evidence approach, these factors combined lead EPA to the conclusion that significant contribution from Colorado sources to 24-hour $PM_{2.5}$ nonattainment monitors in California is very unlikely.

In conclusion, our analysis indicates that emissions of $PM_{2.5}$ and/or its precursors from the sources in Colorado are unlikely to contribute significantly to nonattainment of the 1997 24-hour and annual $PM_{2.5}$ NAAQS in any other state.

*C. EPA's Evaluation of Colorado's Interference With Maintenance*

As discussed above, following the 2006 Guidance and consistent with EPA's approach in CAIR, Colorado's submission for section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS did not evaluate whether emissions from the sources in the state interfere with maintenance of these NAAQS by other states, separately from evaluation of significant contribution to nonattainment in other states. Instead, the State presumed that if Colorado sources did not significantly contribute to violations of the NAAQS in other states, then no further specific evaluation was necessary for purposes of the interference with maintenance element of section 110(a)(2)(D)(i)(I). As explained above, however, CAIR was remanded to EPA, in part because the court found that EPA had failed to give independent meaning to the "interfere with maintenance" requirement, a concern that EPA has addressed in the Transport Rule Proposal. However, Colorado submitted its Interstate Transport SIP without the benefit of EPA's new approach. Accordingly, we are evaluating the state's submission using additional information to address the issue of interference with maintenance.

In particular, EPA has developed an approach to identify those monitors for $PM_{2.5}$ that are located in areas appropriate for consideration as receptors for evaluating the potential for inference with maintenance of the 1997 $PM_{2.5}$ NAAQS. As discussed in more detail above in section A, EPA has examined data from existing monitors for three overlapping three year periods to predict what areas may have difficultly attaining the NAAQS in 2012. By identifying these monitors, EPA can then use available analytical tools to determine whether emissions from sources in a state are having an impact on other states, and the degree of that impact.

EPA did not model the contribution of emissions from Colorado sources (because Colorado and other western states are not fully inside the Transport Rule Proposal's modeling domain) to $PM_{2.5}$ maintenance receptors in other states. Therefore, EPA's assessment of whether emissions from Colorado sources interfere with maintenance in other states relies on a weight-of-evidence approach that considers relevant information (such as identification of maintenance receptors and estimates of $PM_{2.5}$ contributions) from the Transport Rule Proposal pertaining to states within its modeling domain, modeling analysis results from other studies, additional material such as geographical, topographical and meteorological factors, and back trajectory analyses. While conclusions reached for each of the factors considered in the following analysis are not themselves determinative, consideration of these factors together provides a reliable qualitative conclusion that emissions from Colorado are not likely to interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS at monitors in other states.

It should be noted that the maintenance receptors analyzed are separate from the nonattainment receptors analyzed for purposes of significant contribution to nonattainment. EPA is evaluating impacts on these monitors specifically to address the independent interference with maintenance requirement of section 110(a)(2)(D)(i)(I). However, the maintenance receptors in Cook County, IL are geographically close to the nonattainment receptors in that same county, especially relative to the distance from Colorado. The following analysis therefore uses similar evidence to evaluate interference with maintenance as that used for the evaluation of the potential for significant contribution to nonattainment. EPA uses similar evidence only because these nonattainment and maintenance receptors are in similar locations, and recognizes that the two types of receptors are analytically distinct.

In connection with the Transport Rule Proposal, EPA evaluated monitor data for states within the geographic scope of that rulemaking to project future concentrations of $PM_{2.5}$ to identify receptors that are expected to have difficulty maintaining compliance with the NAAQS in 2012, referred to as maintenance receptors. For the 1997 annual $PM_{2.5}$ NAAQS, this analysis identified 16 maintenance receptors in its modeling analysis domain (i.e. states east of the Rocky Mountains). The maintenance receptors for the 1997 $PM_{2.5}$ NAAQS nearest to Colorado are two monitoring sites located in Cook County, Illinois in the Chicago area, and a monitoring site in Harris County, Texas, in the Houston-Galveston-Brazoria area. For the 1997 24-hour $PM_{2.5}$ NAAQS, EPA did not evaluate maintenance receptors because there were no violations of these standards in the 37 states east of the Rockies.[33]

EPA analyzed contribution of annual $PM_{2.5}$ emissions from Colorado sources to maintenance receptors in Cook County, Illinois using the same evidence as was used in Section B of this action to determine the potential impact of Colorado sources on the projected nonattainment receptor in the same county. As noted in that section, modeling conducted for the 2004 CAIR Proposal projected 2010 emissions from Colorado sources to contribute 0.03 $\mu g/m^3$ annual $PM_{2.5}$ emissions to Cook County, just 20% of the significance threshold (0.15 $\mu g/m^3$) for interference with maintenance used in the Transport Rule Proposal for the 1997 annual $PM_{2.5}$ NAAQS. The CAIR Proposal modeling therefore provides the initial evidence—not determinative by itself—that emissions from Colorado sources are not likely to interfere with maintenance of the annual $PM_{2.5}$ NAAQS in Cook County, IL.

Portions of the modeling analysis and projected emission levels calculated for the Transport Rule Proposal provide further evidence for the conclusion that emissions from Colorado sources are unlikely to interfere with maintenance at the Cook County, IL receptors. As noted above, in the Transport Rule Proposal, EPA did not directly model the impacts of emissions from Colorado, but EPA did model the impacts of emissions from other states that are within the modeling domain for the Transport Rule Proposal. Kansas and Nebraska were among the states whose interstate contribution to annual $PM_{2.5}$ maintenance receptors in other states EPA did model for the Transport Rule Proposal.[34] Neither of these two states

[33] Areas east of the Rockies were modeled for the Transport Rule Proposal using a 12km grid. Areas west of the Rockies were modeled using a 36km grid. EPA did not model projections for the 24-hour $PM_{2.5}$ NAAQS in the 36km grid modeling domain. For the states included in the eastern domain, *see* Table IV.C–13, Transport Rule Proposal, 75 FR at 45255–56.

[34] As technical support for the Transport Rule Proposal, all 48 contiguous states were modeled using a horizontal grid resolution of 36 x 36 km. States in the eastern U.S. modeled for contribution in the Transport Rule Proposal, including Kansas and Nebraska, were also modeled using a finer

(Kansas or Nebraska) was projected to contribute more than 0.06 μg/m$^3$,[35] or 40% of the significance threshold, to any maintenance receptor covered by the Transport Rule Proposal, which included the Cook County, IL monitors.

For the Transport Rule Proposal, EPA projected total emissions for $NO_X$ and $SO_2$, the two major precursors for $PM_{2.5}$, for each of the 48 contiguous states in 2012 and 2014. Nebraska and Kansas were each projected to have similar amounts of $PM_{2.5}$ precursor emissions ($NO_X$ and $SO_2$) to those of Colorado.[36] Both states are also upwind of Cook County, IL, but are much closer to the Cook County maintenance receptors than is Colorado.[37] Distance by itself is not an obstacle to long range transport of $PM_{2.5}$ and/or its precursors, and is therefore not determinative of interference with maintenance. However, with increasing distance there are greater opportunities for $PM_{2.5}$ or precursor dispersion and/or removal from the atmosphere due to the effect of winds or chemical sink processes. In summary, EPA-projected $PM_{2.5}$ precursor emissions from Colorado are lower or similar to those in Kansas or Nebraska, and, based on geography and meteorology, emissions from each of these states are more likely to reach maintenance receptors in the eastern U.S. than are emissions from Colorado. Therefore, because Kansas and Nebraska are each well below the significance threshold for interference with maintenance for the annual $PM_{2.5}$ NAAQS in the Transport Rule Proposal, Colorado is likely to be even further below the significance threshold. Based on the modeling analysis from the CAIR Proposal and the Transport Rule Proposal, the weight of evidence shows that it is very unlikely that emissions from Colorado sources would interfere with maintenance of the 1997 annual $PM_{2.5}$ NAAQS at any monitor in Cook County, IL.

EPA did not calculate the impact of Colorado's emissions on the Houston area as part of the CAIR modeling analysis or the Transport Rule Proposal modeling analysis. EPA is therefore using other evidence in a weight-of-evidence assessment to determine if Colorado emissions interfere with maintenance of the 1997 annual $PM_{2.5}$ NAAQS at the Harris County monitor. Our assessment considers modeling analysis from the Transport Rule Proposal, geographical and meteorological factors, and back trajectory analyses.

Oklahoma was among the states EPA modeled for the Transport Rule Proposal to estimate their interstate contribution of annual $PM_{2.5}$ emissions to nonattainment and maintenance monitors in other states. Oklahoma's estimated maximum contribution to any maintenance monitor covered by the Transport Rule Proposal, which included the Harris County, TX monitor, was 0.05 μg/m$^3$,[38] or 33% of the significance threshold.

Back trajectory analysis indicates that air parcel pathways that reach Houston will pass through Oklahoma more frequently than they will pass through Colorado.[39] Because back trajectory analysis results map pathways of air parcels that may or may not transport pollutants, they cannot be considered determinative as to the transport of $PM_{2.5}$ and its precursors, or of the absence of such transport, from Colorado sources. However, this back trajectory analysis provides evidence that $PM_{2.5}$ emissions and $PM_{2.5}$ precursor emissions from Oklahoma are more likely to reach Houston than Colorado emissions, based simply on wind patterns. In addition, emissions from Oklahoma sources travel a much shorter distance to the Houston area than emissions from Colorado sources.[40] Furthermore, the emissions of $SO_2$ and $NO_X$, the two major $PM_{2.5}$ precursors, are significantly lower in Colorado than in Oklahoma.[41] The weight of evidence from these factors combined shows that emissions from Oklahoma sources are much more likely to reach the Houston area than are emissions from Colorado sources. Given that Oklahoma is far below the Transport Rule Proposal threshold for interference with maintenance at annual $PM_{2.5}$ maintenance receptors, including the Harris County receptor, the weight of evidence shows it is highly unlikely that Colorado sources will interfere with maintenance of the 1997 annual $PM_{2.5}$ NAAQS at the Harris County receptor.

As discussed above in section B, EPA developed the Western States Design Values Memo to identify nonattainment and maintenance receptors within a modeling domain that includes the western states.[42] The Western States Design Values Memo analysis uses the same general approach as the Transport Rule Proposal (5 year weighted average design values to project 2012 concentrations) to project nonattainment and maintenance receptors.[43] For the 1997 annual $PM_{2.5}$ NAAQS, the two maintenance receptors identified in the Western States Design Values Memo are in Orange and Los Angeles counties in California.

Distance and topography, while not determinative in of themselves, indicate that $PM_{2.5}$ and precursor transport from Colorado to California is unlikely. The southwestern corner of the Colorado border is approximately 545 miles from Anaheim, the city with the nearest maintenance receptor for these NAAQS. The mountainous topography between Colorado sources and California maintenance receptors also presents a large obstacle to $PM_{2.5}$ transport. Thus, geography and topography significantly reduce the likelihood of transport from Colorado to California's maintenance receptors.

Prevailing wind orientation also provides strong evidence that Colorado's emissions are unlikely to interfere with maintenance of the 1997 annual $PM_{2.5}$ standards in California. West of the Continental Divide the prevailing winds generally move from south-westerly, westerly, or north-westerly directions, as indicated by the typical movement of weather systems. In addition, projected design values presented in the Western States Design Values Memo provide some evidence that interference with maintenance by emissions from Colorado sources to maintenance receptors for the 1997 annual $PM_{2.5}$ NAAQS in California is unlikely. The highest projected average $PM_{2.5}$ design value for 2012 in Colorado is 9.36 μg/m$^3$, or 64% of the 1997 annual $PM_{2.5}$ NAAQS.[44] The highest

horizontal grid resolution of 12 x 12 km. Contribution was determined using zero-out modeling.

[35] Transport Rule Proposal, 75 FR at 47255 (Table IV.C–13).

[36] *See* "Technical Support Document (TSD) for the Transport Rule Docket ID No. EPA–HQ–OAR–2009–0491. Emission Inventories" at 40–43 (June 2010). Based on these projections, in 2012, Kansas will have higher $NO_X$ (~24%) and $SO_2$ (~35%) emissions than Colorado, and Nebraska will have lower $NO_X$ (~23%) and higher $SO_2$ (~94%) emissions than Colorado.

[37] At the shortest possible distance for each measurement, the eastern Colorado border is approximately 320 miles west of the eastern Nebraska border and 370 miles west of the eastern Kansas border.

[38] Transport Rule Proposal, 75 FR at 45255 (Table IV.C–13).

[39] *See* "Eight-Site SA Speciation Trends Final Report. Appendix G: Graphical Representation of the Source Apportionment Results for Houston, Texas," (September 24, 2003), available in the docket for this action.

[40] The Houston area is approximately 270 miles from the nearest Oklahoma border. The Houston area is approximately 630 miles from the nearest Colorado border.

[41] *See* "Technical Support Document (TSD) for the Transport Rule Docket ID No. EPA–HQ–OAR–2009–0491. Emission Inventories" at 40–43 (June 2010). Based on these projections, Oklahoma will have higher $NO_X$ (~54%) and $SO_2$ (~147%) emissions than Colorado in 2012.

[42] Western States Design Values Memo.

[43] *Id.* at 5.

[44] Western States Design Values Memo, Appendix A.

projected average $PM_{2.5}$ design value for 2012 throughout Utah, Arizona and Nevada, the states between Colorado and California, is 12.7 μg/m³, or 84.6% of the NAAQS.[45] Given the distance between Colorado sources and California maintenance receptors, the intervening mountainous topography, the general west-to-east direction of transport winds in the western U.S., and the low level of emissions from Colorado sources, EPA concludes that Colorado sources are not likely to interfere with maintenance of the 1997 annual $PM_{2.5}$ NAAQS in California.

EPA did not project 2012 design values for the 1997 24-hour $PM_{2.5}$ NAAQS in the Western States Design Values Memo. Based on recent monitoring data (2009 design values), the highest 24-hour $PM_{2.5}$ design value in 47 of the 48 states of the continental U.S. (not including California) is 50 μg/m³, which is well below the level of the 1997 24-hour $PM_{2.5}$ NAAQS of 65 μg/m³.[46] Therefore, outside of California, there are no areas that we would expect to have difficulty in maintaining the 1997 24-hour $PM_{2.5}$ NAAQS. In California, the most recent (2009) 24-hour $PM_{2.5}$ design values show that the only monitors that might be at risk for maintenance of the 1997 24-hour $PM_{2.5}$ NAAQS are in Turlock, Fresno, and Bakersfield, in the northern, central and southern sections of the San Joaquin Valley.[47] Of these, the monitor located in Bakersfield is nearest Colorado.

Transport of emissions from Colorado sources to potential $PM_{2.5}$ maintenance receptors in Bakersfield, or any monitors in California further west, is very unlikely, based on a weight-of-evidence analysis. Bakersfield is roughly 570 miles from the nearest Colorado border. The topography between Colorado sources and California monitors is largely mountainous, presenting an obstacle to transport of emissions. Transport winds typically travel west to east in the western United States, making transport of emissions from Colorado to California unlikely. These factors combined lead EPA to the conclusion that interference with maintenance by Colorado sources at 1997 $PM_{2.5}$ NAAQS maintenance receptors in California is very unlikely.

In conclusion, our analysis of the weight of evidence indicates that emissions of $PM_{2.5}$ and/or its precursors from the sources in Colorado are unlikely to interfere with maintenance of the 1997 24-hour and the annual $PM_{2.5}$ NAAQS by any other state.

*D. EPA's Evaluation of Colorado's Prevention of Significant Deterioration (PSD)*

The third element of section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality (CAA section 110(a)(2)(D)(i)(II)). EPA's 2006 Guidance made recommendations to states for making SIP submissions to meet this requirement with respect to both the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

The 2006 Guidance states that the PSD requirement of section 110(a)(2)(D)(i)(II) may be met by the State's confirmation in a SIP submission that new major sources and major modifications in the State are subject to PSD and (if the State contains a nonattainment area for the relevant pollutant) Nonattainment New Source Review (NNSR) programs that implement the relevant standards.[48] The Guidance explains that the requirements for PSD and NNSR programs include provisions that protect air quality in other states. Specifically, a PSD permit may not be issued unless the new or modified source demonstrates that emissions from the construction or operation of the facility will not cause or contribute to air pollution in any area—including areas in other States—that exceeds any NAAQS or any maximum allowable increase (i.e., PSD increment).[49] An NNSR permit may not be issued unless the new or modified source shows it has obtained sufficient emissions reductions to offset increases in emissions of the pollutants for which an area is designated nonattainment, consistent with reasonable further progress toward attainment.[50] Because the PSD and NNSR permitting programs currently applicable in each area require a demonstration that new or modified sources will not cause or contribute to air pollution in excess of the NAAQS in neighboring states or that sources in nonattainment areas procure offsets, States may satisfy the requirement of section 110(a)(2)(D)(i)(II) regarding other States' required measures to prevent significant deterioration of air quality by submitting SIPs confirming that new major sources and major modifications in the State are subject to PSD and (if applicable) NNSR programs that implement the relevant standards.

1. PSD and NNSR SIP Requirements for the 1997 8-Hour Ozone NAAQS

On November 29, 2005, EPA published the Phase 2 implementation rule for the 1997 8-hour ozone NAAQS ("Phase 2 Rule").[51] For ozone nonattainment areas, the Phase 2 Rule requires revisions to States' NNSR SIPs to implement the requirements of the CAA Amendments of 1990, as applicable based on each area's classification for the ozone standard.[52] Specifically, the Phase 2 Rule requires that NNSR SIPs apply all NNSR requirements that apply to major sources of volatile organic compounds (VOCs) to major $NO_X$ emissions sources, except where a $NO_X$ waiver applies under section 182(f) of the Act.[53] In addition, NNSR SIPs must include provisions establishing the applicable major stationary source thresholds, significant emissions rates, and offset ratios for VOCs and $NO_X$ based on each area's classification, as listed in Table 1.[54]

TABLE 1—VOC AND $NO_X$ THRESHOLDS AND OFFSET RATIOS BY OZONE CLASSIFICATION

| Classification | Subpart 1 [55] | Marginal | Moderate | Serious | Severe | Extreme |
|---|---|---|---|---|---|---|
| Major Source (tons per year (tpy)) | 100 | 100 | 100 | 25 | 25 | 10. |
| Significant Emissions Rate (tpy) | 40 | 40 | 40 | 25 | 25 | 0. |
| Offset Ratio [56] | 1 to 1 | 1.1 to 1 | 1.15 to 1 | 1.2 to 1 | 1.3 to 1 | 1.5 to 1. |

[45] *Id.*

[46] Data from EPA's Air Quality System, which is EPA's repository of ambient air quality data. (*See http://www.epa.gov/ttn/airs/airsaqs/*).

[47] The AQS design value data shows that in 2009 design values at monitors in these locations ranged from 60 μg/m³ in Fresno and Turlock, to 70 μg/m³ in Bakersfield.

[48] 2006 Guidance at 6.

[49] 42 U.S.C. 7475(a)(3); 40 CFR 51.166(k).

[50] 42 U.S.C. 7503(a)(1); 40 CFR 51.165(a)(3).

[51] 70 FR 71612.

[52] *See* 70 FR at 71675, 71698–99.

[53] 40 CFR 51.165(a)(8).

[54] 40 CFR 51.165(a)(1)(iv), (a)(1)(v), (a)(1)(x), (a)(8), (a)(9).

For areas designated unclassifiable/attainment for the 1997 ozone NAAQS, the Phase 2 Rule requires revisions to PSD SIPs to require explicit identification of NOx as an ozone precursor.[57] States were required to submit the relevant PSD and NNSR SIP revisions to address the 1997 8-hour ozone NAAQS by June 15, 2007.[58] In the 2006 Guidance, issued before the deadline for States to submit the SIP revisions described above, EPA recommended States make a submission confirming they were on track to meet this deadline. At that point, Colorado had no areas designated nonattainment for ozone. However, on November 20, 2007, the Denver Metropolitan Area/North Front Range ("DMA/NFR") area was designated nonattainment for the 1997 8-hour ozone standard and, consistent with the approach taken in the Phase 1 ozone implementation rule,[59] was made subject solely to the requirements of subpart 1 discussed above. Subsequently, the D.C. Circuit Court of Appeals vacated those elements of EPA's Phase 1 ozone implementation rule that placed areas solely under the implementation requirements of subpart 1.[60] As a result, areas such as the DMA/NFR are now referred to as "former subpart 1 areas." EPA has proposed to classify the DMA/NFR under subpart 2 of part D, title I of the Act as a "marginal" area but has not yet finalized this rulemaking.[61] In the interim, the DMA/NFR area is still subject to the subpart 1 requirements discussed above.

In Colorado's March 31, 2010 submission, the State cites August 17, 2006 revisions to Colorado Regulation No. 3 Part D to assert that they are on track to meet the requirements of the Phase 2 Rule within three years of the DMA/NFR November 20, 2007 nonattainment designation. In this action, EPA proposes to approve portions of the August 17, 2006 revisions, submitted to EPA August 1, 2007, that implement the Phase 2 Rule. Specifically, we propose approval of the sections that adopt language to treat nitrogen oxides as an ozone precursor. Other portions of the August 17, 2006 revisions are being acted upon separately. The sections that we propose to approve are set out in the table below.

| Provision location in Colorado's 8/17/06 Reg 3 Revision | Description of provision—language adopted August 17, 2006 to conform to the Phase II Ozone Implementation Rule is *underlined* | Corresponding provision in 40 CFR 51.166 |
|---|---|---|
| D—II.A.22.a | Significant Emissions Increase or Net Emissions Increase (at a major source) that is significant for VOCs *or* $NO_X$ is significant for ozone. | 40 CFR 51.166(b)(2)(ii). |
| D—II.A.24.d | Major source that is major for VOCs *or* $NO_X$ is major for ozone | 40 CFR 51.166(b)(1)(ii). |
| D—II.A.38.c | VOCs *and* $NO_X$ are precursors for ozone | 40 CFR 51.166(b)(49)(i). |
| D—II.A.42.a | Significant rate of emissions for ozone means 40 tons per year of VOCs *or* $NO_X$. | 40 CFR 51.166(b)(23)(i). |

These revisions are contained with Colorado's rules for its SIP-approved PSD program. Colorado also has a generic SIP-approved NNSR program that applies in any nonattainment area and that relies on the definitions provided in the PSD program, but separately imposes requirements that sources achieve the lowest achievable emission rate ("LAER") and obtain offsets in a ratio greater than one to one. As a result of the structure of Colorado's NNSR program, the revisions to the PSD program discussed above also apply to it. Under these revisions, the State's SIP-approved NNSR program meets the currently applicable requirements of the Phase 2 Rule (prior to reclassification of the DMA/NFR nonattainment area) and satisfies the requirements for the PSD element of 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS.

Colorado's March 31, 2010 Interstate Transport SIP submission is consistent with the 2006 Guidance, when considered in conjunction with the Colorado PSD program revisions that EPA is also proposing to approve in this action. EPA's proposed approval of Colorado's Interstate Transport SIP for the purposes of meeting the third element of section 110(a)(2)(D)(i) is contingent upon the final approval of the PSD program revisions in the form specified in EPA's proposed approval, referenced above. Colorado's SIP regulations for its PSD program were federally-approved and made part of the SIP on September 2, 1986.[62] EPA is proposing to approve, concurrent with this action, Colorado's PSD rule revisions incorporating into the State's regulations the provisions of EPA's November 29, 2005 Phase 2 rule that treat $NO_X$ as a precursor for ozone for the 1997 8-hour ozone NAAQS.[63]

2. PSD SIP Requirements for the 1997 $PM_{2.5}$ NAAQS

Colorado has no areas designated nonattainment for $PM_{2.5}$ and correspondingly no NNSR program for $PM_{2.5}$. EPA thus considers only whether Colorado's SIP-approved PSD program satisfies the requirements of the PSD element of 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS. First, the 2006 Guidance noted that EPA had not yet established PSD increments for $PM_{2.5}$ and therefore, at that point it was difficult for states to determine if additional measures were needed to satisfy the requirements of the PSD element of section 110(a)(2)(D)(i). However, in a final rule published October 20, 2010, EPA established $PM_{2.5}$ increments.[64] EPA set an applicability date of October 20, 2011 for the new increments and required States with SIP-approved PSD programs to submit updates incorporating these increments by July 20, 2012.[65] At this point, though, incorporation of the $PM_{2.5}$ increments is not required to satisfy the PSD element of section 110(a)(2)(D)(i).

The 2006 Guidance also discusses the use of $PM_{10}$ as a surrogate for $PM_{2.5}$ in PSD programs. As recommended in the 2006 Guidance, Colorado's SIP declares

[55] Although the "subpart 1" category is not a classification, the general requirements of subpart 1, part D of title I of the CAA apply in all ozone nonattainment areas (to the extent they are not superseded by the more specific requirements of subpart 2), including those areas now referred to as "former subpart 1 areas" under the DC Circuit Court of Appeals' vacatur of certain elements of EPA's Phase 1 ozone implementation rule. See *S. Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), reh'g denied, 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review).

[56] For any nonattainment area classified as severe or extreme, if the approved plan requires all existing major sources in such an area to use BACT to control VOC and $NO_X$, then the ratio must be at least 1.2 to 1. CAA sections 182(d)(2), (e)(1) and 182(f).

[57] *See* 70 FR at 71679, 71699–700; 40 CFR 51.166(b)(1)(ii), (b)(2)(ii), (b)(23)(i).

[58] 70 FR at 71683.

[59] *See* 69 FR at 23951 (Apr. 30, 2004).

[60] *See S. Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), reh'g denied, 489 F.3d 1245.

[61] 74 FR 2936, 2944 (Jan. 16, 2009).

[62] 51 FR 31125.

[63] 70 FR at 71698–700.

[64] 75 FR 64864.

[65] *Id.* at 64887–88, 64898.

that the State will follow EPA's interim guidance on use of $PM_{10}$ as a surrogate for $PM_{2.5}$.[66] In response to EPA's request of December 1, 2010, the Colorado Air Pollution Control Division, in a January 13, 2011 letter to the EPA Region 8 Air Program, has clarified an ambiguity in its interpretation of the interim guidance.[67] The letter states that, until the guidance is ended or replaced, Colorado will apply it consistent with EPA's interpretation of the federal case law relevant to the use of the $PM_{10}$ Surrogate Policy.[68] The State will also take into account the limits provided in the policy itself, such as the need to identify the technical difficulties that justify the application of the policy in each specific case.[69] With that clarification, the Colorado Interstate Transport SIP satisfies the requirements of the third element of section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS.

3. PSD SIP Requirements for Greenhouse Gases

EPA notes a potential inconsistency between Colorado's Interstate Transport SIP submission and EPA's recently promulgated rule, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans" ("PSD SIP Narrowing Rule").[70] In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of Colorado's PSD program to the extent that it applied PSD permitting to greenhouse gas (GHG) emissions increases from GHG-emitting sources below thresholds set in EPA's June 3, 2010 "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" ("Tailoring Rule").[71] EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of Colorado's PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In Colorado's March 31, 2010 submission, Colorado relied on its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the "interference with PSD" requirements of 110(a)(2)(D)(i). Given EPA's basis for the PSD SIP Narrowing Rule, EPA proposes approval of the Colorado Interstate Transport SIP submission in its entirety if either the State clarifies (or modifies) its submission to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acts to withdraw from EPA consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds.[72] In the alternative, if Colorado does not take either action, EPA proposes to disapprove the Interstate Transport SIP to the extent it incorporates that portion of the previously-approved PSD program from which EPA withdrew its approval in the PSD SIP Narrowing Rule, which is the portion which would have applied PSD permitting requirements to GHG emissions increases from GHG-emitting sources below the Tailoring Rule thresholds. Such disapproval, if finalized, would not result in a need for Colorado to resubmit a SIP revision, sanctions, or a federal implementation plan (FIP).[73]

## VI. Summary of Proposed Action

In light of the data and the weight-of-evidence analysis presented above, EPA is proposing approval of portions of the Colorado Interstate Transport SIP addressing the requirements of CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS. On January 13, 2010, the Colorado AQCC adopted interstate transport SIP revisions addressing requirements (3) and (4) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS, and all four requirements of CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS. Colorado submitted these revisions to EPA on March 31, 2010. Specifically, EPA is proposing to approve the language and demonstration of the March 31, 2010 submission that addresses three requirements of section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ NAAQS: (1) Prohibition of significant contribution to nonattainment of the NAAQS in any other state, (2) prohibition of interference with maintenance of the NAAQS by any other state, and (3) prohibition of interference with other states' required measures to prevent significant deterioration of air quality. EPA is also proposing to approve the language and demonstration that addresses requirement (3) of section 110(a)(2)(D)(i)—prohibition of interference with other states' required measures to prevent significant deterioration of air quality—with respect to the 1997 8-hour ozone NAAQS.

## VII. Statutory and Executive Order Review

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

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

[66] *See* 2006 Guidance at 7.

[67] Letter from Paul Tourangeau, Director, Colorado APCD, Clarifying use of PM10 Surrogacy Policy (Jan 13, 2011), available in the docket for this action.

[68] *See* 75 FR 6827, 6831–32 (Feb. 11, 2010).

[69] *Id.* at 6834.

[70] 75 FR 82536 (Dec. 30, 2010).

[71] 75 FR 31514.

[72] EPA specified how to accomplish this in the PSD SIP Narrowing Rule, 75 FR at 82538, 82540.

[73] *Id.*

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: April 12, 2011.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2011–9451 Filed 4–18–11; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Parts 204, 212, and 252

**RIN 0750–AH02**

## Defense Federal Acquisition Regulation Supplement (DFARS), Alternative Line-Item Structure (DFARS Case 2010–D017)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a standard procedure for offerors to propose an alternative line-item structure that reflects the offeror's business practices for selling and billing commercial items and initial provisioning spares for weapon systems. A new solicitation provision is provided to facilitate offerors' ability to propose such changes to the solicitation structure in their offer.

**DATES:** Comments on this proposed rule should be submitted in writing to the address shown below on or before June 20, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2010–D017, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010–D017" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2010–D017." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010–D017" on your attached document. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2010–D017 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Julian Thrash, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Julian Thrash, 703–602–0310.

### I. Background

DoD is proposing to add new DFARS language that provides offerors the opportunity to propose an alternative line-item structure in solicitations for commercial items and initial provisioning spares. This proposed DFARS change will allow offerors to provide information about their products that may not have been known to the Government prior to issuance of the solicitation.

DoD identified the need to propose an alternative line-item structure during process reviews and working group sessions that assessed destination-acceptance procedures. The process reviews performed by DoD cross-service working groups, which were chartered by the Defense Finance and Accounting System, examined issues causing problems in the receipt and acceptance phase for contract deliverables and payments.

This group determined that the level of detail in the requirements description and line-item structure is not always sufficient for delivery, payment, and subsequent inventory management of the items delivered. For example, the contract line item may be for a desktop computer, but the actual items delivered, invoiced, and inventoried may reflect a separate monitor, keyboard, and central processing unit. The resultant misalignment of transaction detail (*i.e.,* contract line item, invoiced unit, delivery and inventory unit) is the cause of failures in the electronic processes of the DoD's business enterprise requiring manual intervention with potential delays in contractor payment.

To address this recurring problem, this rule is establishing and standardizing a process to enable offerors to propose changes in their offer to the solicitation's line-item structure. Establishing such a process is a first step towards managing variation in these transactions by eliminating or reducing manual intervention.

### II. Proposed DFARS Changes

DoD is proposing to revise the DFARS by adding—

—Paragraph (g) at 204.7103–1, Criteria for establishing;

—A provision prescription at 204.7109(b);

—Reference to the new provision at 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items; and

—A provision at 252.204–70XX, Alternative Line-Item Structure.

Although DoD believes the authority to use an alternative line-item structure currently exists within the Federal Acquisition Regulation (FAR), offerors may not be aware of, or be reluctant to use, this authority to propose an alternative line-item structure. For example—

—FAR 15.203(a)(2) permits the contracting officer to authorize offerors to propose alternative terms, conditions, and contract line-item number structure.

—FAR 12.213, Other Commercial Practices, encourages the contracting officer to consider other commercial practices for incorporation into the solicitation and contract, if appropriate. FAR 52.212–1(e), Instructions to Offerors—Commercial Items, Multiple Offers, encourages offerors to submit multiple offers presenting alternative terms and conditions for commercial items for satisfying the requirements of the solicitation.

Notwithstanding the above, offerors may not understand that they have this latitude as they are not proposing alternate line-item structure to reflect

their business practices. DoD expects that formalizing the ability to propose an alternative line-item structure in a standard DFARS provision for commercial items and initial provisioning spares for weapon systems will prevent contract administration and payment problems. Therefore, DoD welcomes public comment on this subject.

**III. Executive Order 12866 and Executive Order 13563**

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

**IV. Regulatory Flexibility Act**

DoD does not expect this rule to 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 rule does not impose any additional requirements on small businesses. Further, this change does not add to, or delete from existing requirements or authorities for entities to include alternative line-item structures in their offers. This rule is formalizing a process to facilitate offerors' ability to request changes to the line-item structure. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS case 2010–D017), in correspondence.

**V. Paperwork Reduction Act**

The rule does not impose any new 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 Parts 204, 212, and 252**

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 204, 212, and 252 as follows:

1. The authority citation for 48 CFR parts 204, 212, and 252 continue to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 204—ADMINISTRATIVE MATTERS

2. Amend Section 204.7103–1 by adding paragraph (g) to read as follows:

**204.7103–1 Criteria for establishing.**

* * * * *

(g) Certain commercial items and initial provisioning spares for weapons systems are requested and subsequently solicited using units of measure such as kit, set, or lot. However, there are times when individual items within that kit, set, or lot are not grouped and delivered in a single shipment. This creates potential contract administration issues with inspection, acceptance, and payment. In such cases, solicitations should be structured to allow offerors to provide information about products that may not have been known to the Government prior to solicitation and propose an alternate line-item structure as long as the alternate is consistent with the requirements of DFARS 204.71, which provides explicit guidance on the use of contract line items and subline items, and PGI 204.71.

3. Revise section 204.7109 to read as follows:

**204.7109 Contract clauses.**

(a) Use the clause at 252.204–7006, Billing Instructions, in solicitations and contracts if Section G includes—

(1) Any of the standard payment instructions at PGI 204.7108(d)(1) through (6); or

(2) Other payment instructions, in accordance with PGI 204.7108(d)(12), that require contractor identification of the contract line item(s) on the payment request.

(b) Use the provision at 252.204–70XX, Alternative Line-Item Structure, in solicitations for commercial items and initial provisioning spares.

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

4. Amend section 212.301 by revising paragraph (f)(iv) to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) * * *

(iv) Use provisions and clauses prescribed elsewhere in DFARS as follows:

(A) Use the provision at 252.204–70XX, Alternative Line Item Structure, as prescribed in 204.7109(b).

(B) Use the provision at 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in 209.104–70(a).

(C) Use the clause at 252.211–7003, Item Identification and Valuation, as prescribed in 211.274–4.

(D) Use the clause at 252.211–7006, Radio Frequency Identification, as prescribed in 211.275–3.

(E) Use the provision at 252.225–7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in 225.7003–5(b).

(F) Use the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402–4.

(G) Use the clause at 252.225–7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that include the clause at 252.225–7040.

(H) Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

(I) Use the clause at 252.232–7010, Levies on Contract Payments, as prescribed in 232.7102.

(J) Use the clause at 252.232–7011, Payments in Support of Emergencies and Contingency Operations, as prescribed in 232.908.

(K) Use the clause at 252.246–7003, Notification of Potential Safety Issues, as prescribed in 246.371.

(L) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(e).

(M) Use the clause at 252.247–7027, Riding Gang Member Requirements, as prescribed in 247.574(f).

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 252.204–70XX to read as follows:

**252.204–70XX Alternative Line-Item Structure.**

As prescribed in 204.7109(b), insert the following provision:

**ALTERNATIVE LINE-ITEM STRUCTURE (DATE)**

(a) Line items are the basic structural elements in a solicitation or contract that provide for the organization of contract requirements to facilitate pricing, delivery, inspection, acceptance and payment. Line items are organized into contract line items, subline items, and exhibit line items. Separate line items should be established to account for separate pricing, identification (see DFARS 211.274), deliveries, or funding. The Government recognizes that the line item structure in this solicitation may not conform to every offeror's practices. Failure to correct these issues can result in difficulties in accounting for deliveries and processing payments. Therefore, offerors are invited to propose an alternative line item structure for items on which bids, proposals, or quotes are requested in this solicitation to ensure that the resulting contract structure is economically and administratively advantageous to the Government and the Contractor.

(b) If an alternative line-item structure is proposed, the structure must be consistent with DFARS 204.71 and PGI 204.71. A sample line-item structure and a proposed alternative structure are as follows:

Solicitation

| Item No. | Supplies/service | Quantity | Unit | Unit price | Amount |
|---|---|---|---|---|---|
| 0001 ..... | Computer, Desktop with CPU, Monitor, Keyboard and Mouse ..... | 20 | EA ... | ..... | ..... |

Alternative line-item structure offer where monitors are shipped separately.

| Item No. | Supplies/service | Quantity | Unit | Unit price | Amount |
|---|---|---|---|---|---|
| 0001 | Computer, Desktop with CPU, Keyboard and Mouse ..... | 20 | EA ... | ..... | ..... |
| 0002 | Monitor ..... | 20 | EA ... | ..... | ..... |

(End of provision)]

[FR Doc. 2011–8966 Filed 4–18–11; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Part 213

**RIN 0750–AH07**

### Defense Federal Acquisition Regulation Supplement; Ships Bunkers Easy Acquisition (SEA) Card® and Aircraft Ground Services (DFARS Case 2009–D019)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to allow the use of U.S. Government fuel cards in lieu of a Purchase Order-Invoice-Voucher for fuel, oil, and refueling-related items for purchases not exceeding the simplified acquisition threshold.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before June 20, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009–D019, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2009–D019" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2009–D019." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2009–D019" on your attached document. Follow the instructions for submitting comments.

*E-mail: dfars@osd.mil.* Include DFARS Case 2009–D019 in the subject line of the message.

*Fax:* 703–602–0350.

*Mail:* Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Dustin Pitsch, Telephone: 703–602–1014.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The military services and the U.S. Coast Guard have small vessels that must procure fuel away from their home stations. Due to their smaller size and unique mission requirements, these vessels are unable to use the Defense Energy Support Center (DESC) bunkers contracts at major seaports. Previously, DFARS 213.306(a)(1)(A) authorized only the use of the Aviation Into-plane Reimbursement (AIR) Card® up to the simplified acquisition threshold specifically for aviation fuel and oil. Refueling stops often include other ground refueling-related services that exceed the micro-purchase threshold. Due to port restrictions on vessel movements, bunkering merchants do not typically provide support to smaller vessels. These smaller vessels frequent "marina-type merchants." These small vessels fulfill valid mission needs in direct support of national security. Unlike larger vessels with more predictable movements, small vessels' needs are often unpredictable and far-reaching geographically.

DoD proposes to add language at DFARS section 213.306(a)(1)(A) to include purchases of marine fuel, oil, and refueling-related items using the Ships Bunkers Easy Acquisition (SEA)

Card® in lieu of the SF 44, Purchase Order-Invoice-Voucher, up to the simplified acquisition threshold. Additionally, this section is revised to include additional ground refueling-related services when using the AIR Card®. These changes for use of the AIR Card® and SEA Card® will improve the refueling capability of aircraft and smaller vessels at non-contract locations.

**II. Executive Order 12866 and Executive Order 13563**

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

**III. Regulatory Flexibility Act**

DoD does not expect this proposed rule to 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 rule does not have a significant effect beyond DoD's internal operating procedures, substituting use of a fuel card for the SF 44. However, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows.

This is a proposed rule to revise the Defense Federal Acquisition Regulation Supplement (DFARS) at 213 to allow the use of U.S. Government fuel cards in lieu of a Purchase Order-Invoice-Voucher for fuel, oil, and refueling-related items for purchases not exceeding the simplified acquisition threshold. The rule facilitates open market purchases and will not have a significant cost or administrative impact on contractors, subcontractors, or offerors.

The objective of this rule is to amend the DFARS at 213.306(a)(1)(A) to (1) permit the purchase of marine fuel using the Ships' bunkers Easy Acquisition (SEA) Card® in lieu of the SF44, Purchase Order-Invoice-Voucher, up to the simplified acquisition threshold and (2) provide additional ground refueling-related services when using the AIR Card®.

Purchases of aviation fuel are on-the-spot, over the counter transactions ("gas and go"), but generally exceed the micro-purchase threshold due to the price of aviation fuel and oil fuel tank capacities. Accordingly, the threshold for SF44/AIR Card® purchases of fuel and oil was set at the simplified acquisition threshold (SAT) (at DFARS 213.306(1)(1)(A)) under DFARS Case 2007–D017 (final rule effective date February 12, 2007).

The military services and the U.S. Coast Guard have small vessels that fulfill valid mission needs in direct support of national security. Unlike larger vessels, small vessels' movements and needs are often unpredictable. These small vessels must procure fuel away from their home stations, but because of their smaller size and unique mission requirements are unable to use the Defense Logistics Agency energy bunkers contracts available at major seaports. Due to port restrictions, bunkering merchants do not typically provide support to smaller vessels. Instead, these smaller vessels frequent non-contract merchants or "marina-type merchants" that otherwise serve civilian recreational watercraft and similar needs.

Under final DFARS Case 2006–D017, DoD established the threshold for purchases of the AIR Card® as an electronic replacement for the SF44. Presently, DFARS 213.306(a)(1)(A) authorizes only the use of the Aviation Into-plane Reimbursement (AIR) Card® up to the simplified acquisition threshold to procure aviation fuel and oil. However, refueling stops often include other required ground refueling-related services that exceed the micro-purchase threshold. The proposed changes to DFARS subpart 213.306 will permit use of the fuel cards up to the simplified acquisition threshold for other ground refueling-related services and for smaller Navy, Coast Guard, and Army (to include Corp of Engineers) vessels to procure marine fuel while away from their home station.

Approximately 80% of "marina-type merchants" are considered small businesses. Marina-type merchants accepting the SEA Card® will pay a normal fee to the banking institution or processing center, similar to VISA charges these merchants incur from other credit card clients. In addition, merchants are expected to benefit from accelerated payments, since they will be paid by the banking institution in accordance with their merchant agreement. The rule facilitates open market purchases, benefits merchants by making it much easier for merchants to do business with the military and will not have a significant cost or administrative impact on contractors, subcontractors, or offerors.

DoD does not expect this rule to 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 rule does not have a significant effect beyond DoD's internal operating procedures, substituting the use of a fuel card (AIR Card® and SEA Card®) in lieu of the SF44, Purchase Order-Invoice-Voucher.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D019) in correspondence.

**IV. Paperwork Reduction Act**

This 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 213**

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 213 is proposed to be amended as follows:

## PART 213—SIMPLIFIED ACQUISITION PROCEDURES

1. The authority citation for 48 CFR part 213 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

2. In section 213.306, revise paragraph (a)(1)(A) to read as follows:

**213.306 SF44, Purchase Order-Invoice-Voucher.**

(a)(1) * * *

(A) Fuel and oil. U.S. Government fuel cards may be used in lieu of an SF44 for fuel, oil, and authorized refueling-related items (see PGI 213.306 for procedures on use of fuel cards);

* * * * *

[FR Doc. 2011–8959 Filed 4–18–11; 8:45 am]

BILLING CODE 5001–08–P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 236**

**RIN 0750–AG91**

## Defense Federal Acquisition Regulation Supplement; Construction and Architect-Engineer Services Performance Evaluation (DFARS Case 2010–D024)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement to use DoD-unique forms to prepare contractor performance evaluations for construction and architect-engineer services.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before June 20, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2010–D024, using any of the following methods:

*Regulations.gov, http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010–D024" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2010–D024." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010–D024" on your attached document.

*E-mail: dfars@osd.mil.* Include DFARS Case 2010–D024 in the subject line of the message.

*FAX:* 703–602–0350.

*Mail:* Defense Acquisition Regulations System, Attn: Mr. Manuel Quinones, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://regulations.gov,* including any personal information provided. To confirm receipt of your comment, please check *http://www.regulations.gov* approximately two to three days after submission to verify posting, except allow 30 days for posting of comments submitted by mail.

**FOR FURTHER INFORMATION CONTACT:** Mr. Manuel Quinones, telephone 703–602–8383.

**SUPPLEMENTARY INFORMATION:**

### I. Background

This case removes the requirement to use DoD-unique forms to document contractor past performance for construction and Architect-Engineer (A&E) services. Historically, the Federal Government collected past performance data for construction and A&E services on specific standard forms (SF 1420 and SF 1421, respectively). DoD collected the data on DD Form 2626, Performance Evaluation (Construction), and DD Form 2631, Performance Evaluation (Architect-Engineer), in lieu of the standard forms. The Federal Acquisition Regulation (FAR) has been updated to remove the standard forms in their entirety, as well as the procedures that accompanied them, and now points solely to the requirements of FAR subpart 42.15 for past-performance reporting for construction and A&E contracts.

Earlier in 2010, consistent with the Office of Federal Procurement Policy memorandum dated July 29, 2008, Improving the Use of Contractor Performance Information, the Contractor Performance Assessment Reporting System (CPARS) was named as the sole system for collecting past-performance information. As such, CPARS will support Governmentwide data collection requirements for contractor past performance reporting, to include construction and A&E contracts, and DFARS is being updated to delete the outdated procedures and references to the obsolete DD forms.

### II. Executive Order 12866 and Executive Order 13563

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

### III. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This proposed rule addresses the removal of the procedures for use of and references to DD Forms 2626 and 2631 from DFARS. DFARS part 236 supplemented the language previously included in the Federal Acquisition Regulation (FAR) that specified certain procedures and forms be used to document contractor performance for construction and A&E services. The FAR has been updated to remove those procedures and standard forms; FAR 36.201 and FAR 36.604 now refer to FAR 42.1502(e) for the requirements for preparing past performance evaluations.

The objective of this rule is to remove the requirement to use DD Forms 2626, Performance Evaluation (Construction), and 2631, Performance Evaluation (Architect-Engineer), to evaluate contractor past performance. Since the Contractor Performance Assessment Report System (CPARS) is now the Governmentwide system for electronically collecting past performance data, there is no need to specify separate DoD-unique forms to collect the data.

The number of small entities to be impacted by this proposed rule is unknown, however, due to the low dollar thresholds currently in place for reporting, it is expected that a large number of small entities will require past performance evaluations to be completed by Government personnel. Past performance evaluations are required for each construction contract of $650,000 or more and for each construction contract terminated for default regardless of contract value. For Architect and Engineer (A&E) services, past performance evaluations are required for contracts of $30,000 or more, and for each A&E contract that is terminated for default regardless of contract value.

The 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 clarifications proposed require no additional effort by contractors as the changes simply update the DFARS to reflect the current automated process being used. CPARS is already being used by DoD personnel to report construction and A&E services contractor past performance, and the DFARS is merely being updated to

remove references to obsolete forms and procedures and reflect the current process. No start-up costs are expected as only Internet access is required should small entities elect to comment on their past performance rating in CPARS. This rule will not duplicate, overlap, or conflict with any other known Federal rule. There are no known alternatives to this proposed rule.

DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2010–D024), in correspondence.

### IV. Paperwork Reduction Act

The proposed rule does not impose additional 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 236

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 236 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 236 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### 236.201 [Removed]

2. Section 236.201 is removed.

3. Revise section 236.604 to read as follows:

### 236.604 Performance evaluation.

Prepare a separate performance evaluation after actual construction of the project. Ordinarily, the evaluating official should be the person most familiar with the A–E's performance.

[FR Doc. 2011–8962 Filed 4–18–11; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Part 245

## Defense Federal Acquisition Regulation Supplement; Responsibility and Liability for Government Property (DFARS Case 2010–D018)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is issuing a proposed rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the Government self-insurance policy to Government property provided under negotiated fixed-price contracts that are awarded on a basis other than submission of certified cost or pricing data.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before June 20, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2010–D018, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010–D018" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2010–D018." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010–D018" on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2010–D018 in the subject line of the message.

○ *FAX:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mrs. Jennifer Abi-Najm, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://regulations.gov*, including any personal information provided. To confirm receipt of your comment, please check *http://www.regulations.gov* approximately two to three days after submission to verify posting, except allow 30 days for posting of comments submitted by mail.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Jennifer Abi-Najm, 703–602–1013.

**SUPPLEMENTARY INFORMATION:**

### I. Background

This proposed rule will amend the DFARS to extend the Federal Acquisition Regulation (FAR) Government self-insurance policy for loss of Government property to negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data. FAR 45.104, Responsibility and liability for Government property, provides that contractors are not held liable for loss of Government property occurring under the following types of contracts:

(1) Cost-reimbursement contracts.

(2) Time-and-materials contracts.

(3) Labor-hour contracts.

(4) Fixed-price contracts awarded on the basis of submission of certified cost or pricing data.

An exception to the FAR 45.104 policy for Government assumption of risk of loss is for negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data. This rule proposes that DoD contractors not be held liable for loss of Government property under such contracts, and eliminates the use of Alternate I of the FAR clause at 52.245–1, Government Property. Use of Alternate I requires contractors to assume the risk and be responsible for loss of Government property.

### II. Executive Order 12866 and Executive Order 13563

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

### III. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of this rule is to add negotiated fixed-priced contracts, awarded on a basis other than submission of certified cost or pricing data, to the list of contracts for which the Government is self-insuring and assumes risk of loss for Government property provided under such contracts. The basic premise of this case, that the Government should be self-insuring under contracts that provide Government property, is supported by the Government Accountability Office (GAO) policy contained in GAO publication, GAO–04–261SP Appropriations Law, and its decisions.

The Government generally self-insures against contractor loss of Government property acquired or provided under most negotiated Government contracts. An exception to this policy at FAR 45.104 is for negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data. For those contracts, the contractor is liable for loss of Government property (except for reasonable fair wear and tear) invoked by use of FAR clause 52.245–1, Government Property, with its Alternate I.

DoD has approximately 3,000 contractors with contracts that authorize furnishing some form of Government contract property. The majority of property (over 80 percent in terms of original acquisition value) is accountable to large businesses, with the remainder accountable to small entities.

Any impact of this rule on small entities is expected to be beneficial. Large businesses with substantial cash reserves may be in a financial position that enables those firms to select a high insurance deductible in order to garner lower premiums by electing to become self-insuring for potential property loss up to the level of the deductible. Small entities may not have the financial capacity or capability to select a high insurance deductible in order to be self-insuring up to the higher thresholds. The effect of small entities not being able to select higher deductible thresholds may be to incur higher insurance premiums, which might negatively impact their ability to compete. The Government assuming the liability for loss of Government property under negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data should provide some relief for the small entities concerning costs to acquire insurance against risk of loss.

DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2010–D018), in correspondence.

## IV. Paperwork Reduction Act

This rule does not impose 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 245

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 245 is proposed to be amended as follows:

## PART 245–GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 245 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Section 245.104 is added to subpart 245.1 to read as follows:

### 245.104 Responsibility and liability for Government property.

(a) In addition to the contract types listed at FAR 45.104, contractors are not held liable for loss of Government property under negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data.

3. Section 245.107 is revised to read as follows:

### 245.107 Contract clauses.

(1) Use the clause at 252.245–7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.

(2) Use the clause at 252.245–7001, Tagging, Labeling, and Marking of Government-Furnished Property, in solicitations and contracts that contain the clause at FAR 52.245–1, Government Property.

(3) Use the clause at 252.245–7002, Reporting Loss of Government Property, in solicitations and contracts that contain the clause at FAR 52.245–1, Government Property.

(4) For negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data for which Government property is provided, use the clause at FAR 52.245–1, Government Property, without its Alternate I.

[FR Doc. 2011–8958 Filed 4–18–11; 8:45 am]

BILLING CODE 5001–08–P

# Notices

Federal Register

Vol. 76, No. 75

Tuesday, April 19, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2010–0104]**

### Notice of Decision To Authorize the Importation of Fresh Rambutan Fruit From Malaysia and Vietnam

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public of our decision to authorize the importation into the continental United States of fresh rambutan fruit (*Nephelium lappaceum*) from Malaysia and Vietnam. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh rambutan fruit from Malaysia and Vietnam.

**DATES:** *Effective Date:* April 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulations, Permits, and Import Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0754.

**SUPPLEMENTARY INFORMATION:**

## Background

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on December 15, 2010 (75 FR 78207–78208, Docket No. APHIS–2010–0104), in which we announced the availability, for review and comment, of a PRA that evaluates the risks associated with the importation into the continental United States of fresh rambutan fruit (*Nephelium lappaceum*) from Malaysia and Vietnam. We solicited comments on the notice for 60 days ending on February 14, 2011. We received two comments by that date, from a State agriculture agency and an embassy agricultural affairs office. One commenter concurred with the mitigations described in the risk management document. The other commenter remarked that the notice itself did not specify which of the five designated phytosanitary measures would be required for the rambutan from Malaysia and Vietnam, so that it was not clear that APHIS was requiring treatment with irradiation. It is true that our December 2010 notice itself did not cite the specific mitigation measures that we had identified for rambutan from Malaysia and Vietnam, but those measures were detailed in the risk mitigation document made available with the notice. Those mitigation measures are also described in this notice. Accordingly, we have determined that no changes to the PRA are necessary based on the comment.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of fresh rambutan fruit from Malaysia and Vietnam subject to the following phytosanitary measures:

- The rambutan may be imported into the continental United States in commercial consignments only.
- For rambutan from Malaysia, each consignment must be inspected by the national plant protection organization (NPPO) of Malaysia using a sampling procedure mutually agreed upon by APHIS and the NPPO. A representative sample of fruit must be drawn from each lot, inspected, and found free from the fungus *Oidium nephelii*.
- The rambutan must be irradiated in accordance with 7 CFR part 305 with a minimum absorbed dose of 400 Gy.
- If the irradiation treatment is applied outside the United States, each consignment of fruit must be precleared by APHIS inspectors in the country of origin (i.e., Malaysia or Vietnam). The rambutan must be jointly inspected by APHIS and the NPPO of the country of origin and accompanied by a phytosanitary certificate (PC) attesting that the fruit received the required irradiation treatment. For rambutan from Malaysia, the PC must also include an additional declaration stating that the consignment was inspected and found free from *Oidium nephelii*.
- For rambutan from Malaysia, if the irradiation treatment is to be applied upon arrival in the United States, each consignment of fruit must be inspected by the Malaysia NPPO prior to departure and accompanied by a PC with an additional declaration stating that the consignment has been inspected and found free from *Oidium nephelii*.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, rambutan fruit from Malaysia and Vietnam will be subject to the general

[1] To view the notice, the PRA, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0104.*

requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables. Further, for fruits and vegetables requiring treatment as a condition of entry, the phytosanitary treatments regulations in 7 CFR part 305 contain administrative and procedural requirements that must be observed in connection with the application and certification of specific treatments.

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 13th day of April 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–9465 Filed 4–18–11; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Rio Grande National Forest, Divide Ranger District; Mineral County, CO; Village at Wolf Creek Land Exchange

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Rio Grande National Forest is preparing an Environmental Impact Statement to analyze the environmental effects of the proposed Village at Wolf Creek Land Exchange. This project includes the conveyance of approximately 177 acres of a non-Federal land parcel owned by the Leavell-McCombs Joint Venture (LMJV) to the United States in exchange for National Forest System lands totaling approximately 204 acres. The non-Federal parcel is located in *T37N., R2E., NMPM, Mineral County, CO,* Sections 4, 5, 8 and 9, a portion of Tract 37. The Federal parcel is located in *T37N., R2E., NMPM, Mineral County, CO*, Sections 3, 4, 5, and 9.

**DATES:** Formal scoping on this project begins on April 20, 2011. Public open houses will be held 4:30–7 p.m. on April 25, in Creede, CO at the Creede Community Center; April 26 in Pagosa Springs at the Aragon Recreation Center, CO and April 27 in Del Norte at the Rio Grande County Annex Building, CO. Comments concerning the scope of the analysis should be received by June 4, 2011. The draft environmental impact statement is expected in December, 2011 and the final environmental impact statement is expected in March, 2012.

**ADDRESSES:** Send written comments to the Rio Grande National Forest, Divide Ranger District, 13308 West Highway 160, Del Norte, CO 81132. Comments may also be sent via e-mail to: *comments-rocky-mountain-rio-grande@fs.fed.us* or via facsimile to 1–719–657–6035.

**FOR FURTHER INFORMATION CONTACT:** Additional information related to the proposed project can be obtained from the Forest webpage at: *http://www.fs.usda.gov/riogrande.* For further information, contact Tom Malecek at (719) 657–3321.

**SUPPLEMENTARY INFORMATION:**

*Background:* In 1986, a Decision Notice for the Environmental Assessment of the Proposed Wolf Creek Land Exchange allowed the conveyance of 300 acres of National Forest System (NFS) land on the Divide Range District adjacent to the Wolf Creek Ski Area (WCSA) in exchange for non-Federal lands located within the Saguache Ranger District on the Rio Grande National Forest. In 2004, the Forest Service initiated an Environmental Impact Statement (EIS) in response to a request for legal access to the property, under the Alaska National Interests Lands Conservation Act (ANILCA), in order to allow the private landowners the ability to begin development of the Village at Wolf Creek. In March 2006, a Record of Decision (ROD) was signed, approving transportation and utility corridors across NFS lands. In February 2008, as part of a Settlement Agreement, the ROD was withdrawn. In September 2008, the Forest Service initiated a new EIS after receiving a new application for permanent road access from the proponent. Early in the project analysis, the project was placed on indefinite hold pending new information and potentially a new application.

LMJV has submitted this current land exchange proposal as an alternative to an ANILCA enabled easement under the Federal Land Policy and Management Act (FLPMA), as the Federal parcel abuts US Highway 160.

*Purpose and Need for Action:* The non-Federal party, LMJV, holds title to land within the boundaries of the NFS, and as such "* * * the Secretary shall provide such access to non-federally owned land within the boundaries of the National Forest System as the Secreatry deems adequate to secure to the owner the reasonable use and enjoyment thereof * * *"

Therefore, the Rio Grande NF's Purpose and Need for Action is to allow the non-Federal party to access its property as legally entitled, while minimizing environmental effects to natural resources within the project area. Any method of accommodating access to private land in the project area needs to be cognizant of and sensitive to the operations and recreational experiences at Wolf Creek Ski Area, which is adjacent to the non-Federal parcel and operates under a Special Use Permit from the Rio Grande NF.

*Proposed Action:* Given the non-Federal party's legal right to access its property and the United States legal obligation to provide access to the inholding, the Rio Grande NF believes that a land exchange may be in the public interest and thus merits additional evaluation. Potential public benefits include:

- Development of private lands further away from Wolf Creek Ski Area, reducing impacts to skiers and ski area operations.
- Locating residential development and associated infrastructure in an area that is more suitable due to topography, natural resources, and proximity to US Highway 160.
- A net gain of wetlands and perennial streams in public ownership.
- A lower density development.
- The land exchange would obviate the need for ANILCA access.

The Proposed Action involves the conveyance of approximately 178 acres of non-Federal lands to the United States in exchange for NFS lands totaling approximately 204 acres. Upon conveyance of the non-Federal parcel to the United States, the newly acquired NFS lands would be managed by the Rio Grande NF per its 1996 Land and Resource Management Plan, as amended. The lands proposed for inclusion in the land exchange are summarized below.

**Non-Federal Lands Proposed To Be Conveyed to the United States**

- *Township 37 North, Range 2 East, N.M.P.M., Mineral County, Colorado*
- Sections 4, 5, 8, and 9: A portion of Tract 37
- Total Area: Approximately 178 acres

In total, the non-Federal parcel is approximately 300 acres in size, of which approximately 178 acres are proposed to be conveyed to the United States. The non-Federal parcel is located approximately 20 miles southwest of South Fork and 25 miles northeast of Pagosa Springs in Mineral County, Colorado.

The non-Federal parcel is located just east of Wolf Creek Pass at approximately 10,300 feet in elevation and is comprised of spruce-fir forest, open meadows and wetlands. The non-Federal parcel adjoins NFS lands on all sides and is located within the Wolf Creek Ski Area permit boundary.

Federal Lands Proposed to be Conveyed by the United States to the Non-Federal Party:

• *Township 37 North, Range 2 East, N.M.P.M., Mineral County, Colorado*

• Sections 3, 4, 5, and 9: A portion thereof

• Total Area: Approximately 204 acres

The 204-acre Federal parcel is just north and east of the non-Federal parcel, with the remaining portion of the non-Federal party's land separating the two. The Federal parcel is immediately contiguous to US Highway 160 and has similar habitat types as the non-Federal parcel.

*Alternative to the Proposed Action—Permanent Easement to the Non-Federal Parcel (ANILCA Alternative):* As an alternative to a land exchange, the Rio Grande NF will analyze a potential ANILCA enabled easement under FLPMA across NFS lands to provide access to, and allow development of, the non-Federal parcel.

*Common To Both Alternatives:* Common to the proposed action and ANILCA access alternative:

1. LMJV's conceptual plans for the Village at Wolf Creek indicate that full buildout would include a four-season resort with a variety of hotels, homes and condominiums; approximately 200,000 square feet of commercial space; and ancillary infrastructure such as roads, water treatment and storage, wastewater treatment and disposal, and power distribution.

2. A grade separated interchange off Highway 160 capable of handling full-buildout traffic estimates would be required to be built at the initial stage of development.

*Responsible Official:* The responsible official is Dan Dallas, Rio Grande National Forest Supervisor, San Luis Valley Public Lands Center, 1803 West Highway 160, Monte Vista, CO 81144.

*Nature of Decision To Be Made:* Although the Rio Grande NF received a proposal for the land exchange from a private entity, this is now a Forest Service Proposed Action, which will be analyzed in detail in an EIS. The EIS will analyze potential impacts to the physical, human and biological environment that may result from implementation of the Proposed Action. Issues raised during this public scoping period may generate additional alternatives to be considered along with the proposed action.

A Record of Decision (ROD) will be issued following completion of the analysis in the EIS. Based on the analysis in the EIS, the Responsible Official will decide whether to authorize the Proposed Action, the No Action Alternative (required for inclusion in an EIS) or any action alternative(s) given detailed analysis in the document.

*Scoping Process:* This notice of intent initiates the scoping process, which guides the development of the EIS. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed project. Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify resource issues that will be analyzed in the EIS. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate potential additional alternatives, prescribe mitigation measures and project design features, or analyze environmental effects.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Please note the following public open houses during this scoping period: 4:30–7:00 p.m. on April 25, in Creede, CO at the Creede Community Center; April 26 in Pagosa Springs, CO at the Aragon Recreation Center; and April 27 in Del Norte, CO at the Rio Grande County Annex Building.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this Proposed Action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: April 13, 2011.

**Kathy M. Kurtz,**

*Acting Forest Supervisor.*

[FR Doc. 2011–9425 Filed 4–18–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Reporting Requirements for the Ocean Salmon Fishery Off the Coasts of Washington, Oregon, and California.

*OMB Control Number:* 0648–0433.

*Form Number(s):* NA.

*Type of Request:* Regular submission (renewal of a current information collection).

*Number of Respondents:* 40.

*Average Hours per Response:* 15 minutes.

*Burden Hours:* 10.

*Needs and Uses:* Based on the management regime specified each year by the National Marine Fisheries Service (NMFS), with authority codified in 50 CFR 660.408, designated regulatory areas in the commercial ocean salmon fishery off the coasts of Washington, Oregon, and California may be managed by numerical quotas. To accurately assess catches relative to quota attainment during the fishing season, catch data by regulatory area must be collected in a timely manner. Requirements to land salmon within specific time frames and in specific areas may be implemented in the preseason regulations to aid in timely and accurate catch accounting for a regulatory area. State landing systems normally gather the data at the time of landing. If unsafe weather conditions or mechanical problems prevent compliance with landing requirements, fishermen need an alternative to allow for a safe response. Fishermen would be exempt from landing requirements if the appropriate notifications are made to provide the name of the vessel, the port where delivery will be made, the approximate amount of salmon (by species) on board, and the estimated time of arrival.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: April 14, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–9412 Filed 4–18–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA374**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Notice of receipt of a permit application; request for comments.

**SUMMARY:** Notice is hereby given that NMFS has received an application for a permit to conduct research for scientific purposes from the United Water Conservation District (United) in Santa Paula, California. The requested permit would affect the endangered Southern California (SC) Distinct Population Segment (DPS) of steelhead (*Oncorhynchus mykiss*). The public is hereby notified of the availability of the permit application for review and comment before NMFS either approves or disapproves the application.

**DATES:** Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) on or before May 19, 2011.

**ADDRESSES:** Written comments on the permit application should be sent to Matt McGoogan, Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Comments may also be sent using e-mail *FRNpermits.lb@noaa.gov* or fax (562) 980–4027. The permit application is available for review, by appointment, at the foregoing address and is also available for review online at the Authorizations and Permits for Protected Species Web site at *https://apps.nmfs.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Matt McGoogan at phone number (562) 980–4026 or e-mail: *matthew.mcgoogan@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Authority

Issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should provide the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

#### Permit Application Received

United has applied for a permit (permit 15496) to study steelhead in the Santa Clara River watershed. The primary objectives of this study are to (1) evaluate smolt migration rates in a highly altered channel with a dynamic groundwater and surface water interchange, and (2) evaluate the effects of increased water temperature during surface flow loss and how this affects migration rates of smolts and the ability of smolts to successfully migrate to the ocean. Research activities include monitoring streamflow and water temperature, capturing smolts in a downstream migrant trap located at United's Freeman Diversion, recording weight and length of captured smolts, taking tissue (scale and fin clip) samples from each smolt, tagging captured smolts with Advanced Telemetry Systems (ATS) tags, and using portable and stationary antennas, receivers, and data loggers capable of tracking ATS tags to compile smolt movement data. Field activities will occur between May 2011 and December 2015. United has requested an annual non-lethal take (ATS tag implantation and tissue samples) of up to 100 smolts as part of the proposed study. The unintentional lethal take that may occur as a result of research activities is up to 3 smolts annually. Overall, no intentional lethal take of steelhead is expected in association with any aspect of these research activities. See the permit application for greater details on study description and methodology.

Dated: April 13, 2011.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–9450 Filed 4–18–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA373**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Application for the renewal of a scientific research permit.

**SUMMARY:** Notice is hereby given that NMFS has received a scientific research permit application request relating to salmonids listed under the Endangered Species Act (ESA). The proposed research is intended to increase knowledge of the species and to help guide management and conservation efforts. The application and related documents may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.* These documents are also available upon written request or by appointment by contacting NMFS by phone (707) 825–5186 or fax (707) 825–4840.

**DATES:** Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on May 19, 2011.

**ADDRESSES:** Written comments on the application should be submitted to the Protected Resources Division, NMFS, 1655 Heindon Road, Arcata, CA 95521. Comments may also be submitted via fax to (707) 825–4840 or by e-mail to *FRNpermits.AR@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Shari Anderson, Arcata, CA ph.: (707) 825–5186, e-mail: *Shari.Anderson@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Species Covered in This Notice

This notice is relevant to federally threatened California Coastal (CC) Chinook salmon (*Oncorhynchus tshawytscha*), threatened Southern Oregon/Northern California (SONCC) Coho salmon (*O. kisutch*), and threatened Northern California (NC) steelhead (*O. mykiss*).

## Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

## Application Received

*Permit 16128*

United States Geological Survey (USGS), California Coop Fish & Wildlife Research Unit, is requesting a 5-year permit to take adult and juvenile CC Chinook salmon, SONCC coho salmon, and NC steelhead associated with three research projects in two watersheds in northern California. In the three studies described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

Project 1 is a study to estimate abundance and survival of all life stages of CC Chinook salmon, SONCC coho salmon, and NC steelhead in Prairie Creek (Humboldt County). Annually, USGS proposes to observe (snorkel survey), capture (backpack electrofisher), handle (identify), and release fish to estimate juvenile abundance. Escapement of adults will be estimated annually from the capture (resistance board weir), handle (identify and measure), marking (PIT tagging), and releasing of fish. Carcasses will be captured, handled, and released; live adults and redds will be observed (spawning surveys) annually. Smolt abundance will be estimated annually through the capture (screw trap), handling (identify, measure), marking (dye injection), and release of fish. Samples (scale collection) will be collected from NC steelhead smolts when captured. Data collected by this research will inform managers of the status and trends in abundance and survival of these species.

Project 2 is a study that will estimate adult CC Chinook salmon, SONCC coho salmon, and NC steelhead escapement in Redwood Creek (Humboldt County) using dual frequency identification sonar (DIDSON). Adult CC Chinook salmon, SONCC coho salmon, and NC steelhead will be observed annually through the operation of a small sonar device from the edge of the river channel to record fish passing upstream. The research will inform managers of the status and trends in abundance of these species.

Project 3 is a study that will document the importance of cool water habitats in the Klamath River watershed (Humboldt County). The study will be performed in two different locations in the Klamath River basin; tributary mouths in the Lower Klamath River and estuary, and at the confluence of Independence Creek and the Klamath River. USGS proposes to gather information on juvenile Chinook salmon (not ESA listed), juvenile steelhead (not ESA listed), and SONCC coho salmon use of cool water habitats. Annually, intensive sampling will occur at the confluence of Independence Creek and the Klamath River. Sampling will be carried out weekly during the months of July, August, and September. Intensive sampling will monitor the movements of juvenile salmonids in and out of cool water habitats and their feeding behaviors in those habitats. Juvenile salmonids will be captured (beach seine), handled (identify, measure, weigh), marked (PIT tagged), and released. A portion of the fish captured (no more than 20) will have their stomachs pumped to determine relative feeding success. Abundance of juvenile salmonids and the frequency of their feeding behaviors will be estimated through observation (snorkel survey). Less intensive sampling will occur once every two weeks during the months of July, August, and September in the Lower Klamath River, its tributaries, and the estuary and will consist of capture (beach seine), handle (identify, measure, weigh), and release of fish. The information gathered will inform managers on the importance of cool water habitats in planning for restoration of the river.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decision will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: April 14, 2011.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–9456 Filed 4–18–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA375**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Applications for seven new scientific research permits and one permit modification.

**SUMMARY:** Notice is hereby given that NMFS has received eight scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

**DATES:** Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on May 19, 2011.

**ADDRESSES:** Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *nmfs.nwr.apps@noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, Portland, OR ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*. Permit application instructions are available from the address above, or online at apps.nmfs.noaa.gov *http://www.nwr.noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened lower Columbia River (LCR), threatened upper

Willamette River (UWR), endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer (spr/sum), and threatened Puget Sound (PS).

Chum salmon (*O. keta*): Threatened Columbia River (CR).

Steelhead (*O. mykiss*): Threatened LCR, threatened UWR, threatened middle Columbia River (MCR), threatened SR, threatened UCR.

Coho salmon (*O. kisutch*): Threatened LCR, threatened Oregon Coast (OC), threatened Southern Oregon/Northern California coasts (SONCC).

Sockeye salmon (*O. nerka*): Endangered SR.

**Authority**

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

**Applications Received**

*Permit 14271—3M*

The Washington State Department of Ecology (Ecology) is seeking to modify and extend their 2-year scientific research permit that currently authorizes them to take juvenile and adult LCR Chinook, CR Chum, LCR coho, MCR Steelhead, and LCR steelhead, PS Chinook salmon, PS steelhead, HC chum salmon, UCR steelhead and Chinook, SR sockeye. The modification would extend the permit for one more year (through 2012), increase the number of MCR steelhead they may take, and allow them to take SR steelhead, SR fall Chinook, and SR spr/sum Chinook. The purpose of the project is to continue developing a sampling plan to report on the status of watershed health and salmon recovery efforts at three spatial scales: Water Resource Inventory Area, Salmon Recovery Region, and statewide. The goal is to develop a quality assurance monitoring plan for statewide probability-based sampling of aquatic habitat conditions and species diversity and abundance. This status and trends monitoring plan is mandated by a Washington State Governor's executive order. The information gathered by this research would benefit listed salmonids by helping resource managers evaluate the effectiveness of habitat restoration efforts and monitor aquatic species status and trends. The applicant proposes to capture fish using backpack and boat electrofishing equipment. Listed fish would be enumerated and immediately released. The applicant does not propose to kill any listed fish species, but a small number may die as an unintended result of the activities.

*Permit 15486*

Forest and Channel Metrics (FCM) Inc. is seeking a 2-year permit to capture and handle juvenile UCR Chinook and steelhead, LCR Chinook and steelhead, SR Chinook (spr/sum) and steelhead, PS Chinook, and LCR coho salmon during the course of headwater stream surveys over wide parts of Washington State. The work they would conduct is substantially similar to work previously conducted under another permit—Permit 13375. The purpose of the research is to provide owners of industrial forest lands and the major state lands managers in Washington with accurate maps of where threatened and endangered salmonids are found on State and industrial Forest lands. The work would benefit the salmon and steelhead by helping land managers plan and carry out their activities in ways that would have the smallest effect possible on the listed fish. The fish would be captured using backpack electrofishing equipment and released without tagging or even handling more than is necessary to ensure that they have recovered from the effects of being captured. The FCM researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

*Permit 16122*

The Colville Confederated Tribes (CCT) are seeking a 5-year permit to take juvenile UCR steelhead in the Okanogan River, Washington. The purpose of the research is to monitor steelhead populations in the basin. The researchers are seeking to estimate natural production and productivity and calculate annual population estimates, egg-to-emigrant survival, and emigrant-to-adult survival rates. The population estimates will be used to evaluate the effects of supplementation programs in the Okanogan River Basin and provide managers with the data they need to develop a rigorous spawner-recruit relationship. The research would benefit the fish by giving state and Federal managers information on UCR steelhead status and the degree to which they are being affected by supplementation programs in the area. The fish would be captured at screw trapping sites on the Okanogan River. All captured fish will be identified and checked for marks and tags. A subsample of selected fish will be measured and weighed before being released back into the Okanogan River. A further subsample will be marked with a brown dye, released upstream of the screw traps, and recaptured for the purpose of determining trap efficiency. The researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

*Permit 16142*

The Confederated Tribes of the Warm Springs Reservation (CTWSR) are seeking a 5-year permit to capture, handle, and release juvenile MCR steelhead in the John Day River, Oregon. The purpose of the research is to monitor anadromous fish response at habitat restoration projects throughout the John Day Basin. Currently, many watershed restoration actions are taking place in the basin (generally, they are being conducted by Soil and Water Conservation Districts, Watershed Councils, and State, Tribal and Federal Agencies). However there is some question regarding how effective these projects are in terms of helping recover the listed salmonids. The researchers would estimate the density of juvenile salmonids at the project level and thereby monitor any changes in rearing juvenile abundance occurring in response to the restoration actions. All treatment (restoration) sites will be paired with control sites. The research would benefit the fish by helping managers determine the most effective ways to restore habitat. The CTWSR would capture the fish by the means of beach seines, dip nets, and backpack electrofishing. They would also conduct some snorkel surveys. The researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

*Permit 16181*

Dr. Christopher Peery is seeking a 5-year permit to handle and tag adult SR sockeye at the adult fish trap at Lower Granite Dam, Washington. The purpose of the study is to identify what conditions affect sockeye migration success and thereby allow managers to better determine when (and if) transporting adult sockeye upstream

would be safer for them than allowing them to migrate upriver naturally. The researchers propose to evaluate the relationship between timing, fish condition, the river environment, and migration success in the river reaches upstream from Lower Granite Dam. Sockeye salmon seen at the Lower Granite Dam facility often do not reach their spawning grounds; the research would benefit the fish by determining the reasons for this and thereby helping managers either address the problem or, as noted, determine when it may be safer to transport the fish to the spawning grounds. The fish would be taken from the adult fish trap at Lower Granite Dam, anesthetized, measured, weighed, tissue sampled, fitted with radio tags, allowed to recover, and returned to the river. The researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

*Permit 16298*

The Shoshone-Bannock Tribes (SBT) are seeking a 5-year permit to annually take juvenile and adult SR spr/sum Chinook and juvenile SR steelhead in Bear Valley Creek, Idaho. The purpose of the research is to estimate fish abundance, smolt-to-adult return rates, and adult productivity in Bear Valley Creek with a high degree of accuracy. The researchers are seeking to generate information that may be used widely throughout the Salmon River subbasin. This monitoring project was recommended as part of the "Anadromous Salmonid Monitoring Strategy Viable Salmonid Population Criteria and Subset of Tributary Habitat and Hatchery Effectiveness," developed through the Columbia Basin Coordinated Anadromous Monitoring Workshop. The work will benefit fish by giving managers key information about population status in the Salmon River subbasin which, in turn, will be used to inform recovery plans and land-management activities. The SBT would count and monitor adult spr/sum Chinook at a video station and they would handle, measure, and tissue sample juvenile SR spr/sum Chinook and steelhead at a screw trap. They would also do some harvest monitoring (creel surveys) and spawning ground surveys. The researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

*Permit 16329*

The Oregon Department of Environmental Quality (DEQ) is seeking a 5-year permit to take adult and juvenile fish of every species in this notice except for UCR Chinook and steelhead and SR sockeye. The fish would be taken during the course of five possible projects: (1) *The National Streams and Rivers Assessment.* This EPA-sponsored survey uses a random sampling design to estimate the health (in terms of water quality and other physical and biological parameters) of streams and rivers around the region and nation. The fish portion of the project looks at species assemblage as an indicator of a system's overall ecological integrity, evaluates presence of invasive fish species, and evaluates toxic contamination of fish tissue. Field work is planned for this project in 2013 and 2014 and may involve as many as 60 sites. (2) *Oregon Toxics Monitoring Program.* This program looks at a range of pollutants in water, river sediments, and fish tissues—including current use and legacy pesticides, estrogenic compounds, pharmaceutical and personal care products, metals, and industrial chemicals such as PCBs, dioxins and furans. The species targeted for this work are typically bass and pikeminnow. Survey sites are typically at the downstream portion of larger rivers and tributaries. This work may involve as many as 20 sites per year. (3) *Basins Biological Assessments.* The DEQ is developing a monitoring program that looks at a range of environmental health indicators (such as fish species) on a basin scale. This work would feed into that effort. (4) *Mixing Zone Surveys.* Mixing zones are sections of water bodies downstream of municipal and industrial effluent discharges. The DEQ occasionally monitors fish use and health within and outside mixing zones to evaluate how effectively waste treatment protocols and processes are protecting the environment. Mixing zones are typically found in larger rivers. This work may involve as many as 10 sites per year. (5) *Spill Impact and Cleanup Effectiveness Evaluations.* The DEQ occasionally studies water bodies that have received toxic spills. These surveys could potentially occur in any state water body and could involve as many as five sites per year.

The work would benefit fish in a number of different ways—from helping evaluate watershed health to generating information on contaminant concentrations to determining if current water quality protection regulations and methods are sufficiently effective. The DEQ researchers would capture fish using a variety of methods—boat- and backpack electrofishing, hook-and-line angling, and seines. No drugs or anesthesia would be used on the captured fish. The fish would be held very briefly and, except for brief transfers and some minimal measuring and weighing, the animals would not be handled out of water. All fish would be returned to the capture sites as quickly as possible. The researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

*Permit 16383*

The U.S. Fish and Wildlife Service (USFWS) is seeking a permit to annually take listed salmonids while conducting research designed to (a) determine if there is any disease transmission between wild and hatchery fish in the upper Columbia River and (b) gather baseline information on pathogen presence in the local fish populations. This research has been conducted for over nine years under a previous scientific research permit—Permit 1423. The research will take place in the Methow and Entiat River subbasins, Washington. The research will benefit listed fish by increasing our knowledge of disease presence and transmission in the Upper Columbia River and thereby help managers reduce the risks associated with those diseases. The fish will be captured using a variety of methods: Nets, traps, boat- and backpack electrofishing, and hook-and-line angling. Many of the captured fish will be killed and sampled for pathogens, but the majority will immediately be released back to the site of their capture.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: April 14, 2011.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–9454 Filed 4–18–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA323**

### Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approved Sector Monitoring Service Providers

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

**ACTION:** Notification of NMFS-approved sector monitoring service providers.

**SUMMARY:** This notice announces that the Administrator, Northeast Region, NMFS (Regional Administrator) has approved five service providers who applied as eligible to provide dockside and/or at-sea monitoring services to Northeast (NE) multispecies sectors in FY 2011. Amendment 16 to the NE Multispecies Fishery Management Plan (FMP) expanded sector management in the NE multispecies fishery, including a requirement for independent, third-party dockside and at-sea monitoring of sector trips beginning in fishing years (FY) 2010 and 2012, respectively; however, sectors could elect to have an at-sea monitoring program starting in FY 2010. Regulations implementing Amendment 16 require such third-party monitoring service providers to apply to, and be approved by, NMFS in a manner consistent with the Administrative Procedure Act in order to be eligible to provide dockside and/or at-sea monitoring services to sectors. The regulations specify application requirements and criteria for the approval of service providers, which potential providers must demonstrate their compliance with as part of an application for approval by NMFS. Consistent with these regulatory requirements, the Regional Administrator received and reviewed applications from five monitoring service providers for approval to provide dockside and/or at-sea monitoring services to NE multispecies sectors in FY 2011.

**ADDRESSES:** Copies of the list of NMFS-approved sector monitoring service providers are available at *http://www.nero.noaa.gov/sfd/sfdmultisector.html* or by sending a written request to:

- *Fax:* (978) 281–9135, Attn: Mark Grant.
- *Mail:* 55 Great Republic Drive, Gloucester, MA 01930, Attn: Mark Grant.

For service provider contact information, see the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Mark Grant, Sector Policy Analyst, (978) 281–9145, fax (978) 281–9135, e-mail *Mark.Grant@NOAA.gov.*

**SUPPLEMENTARY INFORMATION:** Amendment 16 to the FMP expanded the sector management program, including adding a requirement to ensure accurate monitoring of sector catch at sea and landings dockside. The regulations implementing Amendment 16 required (75 FR 18262; April 9, 2010) dockside monitoring (DSM) of a minimum of 50 percent of all sector trips in FY 2010 and a minimum of 20 percent of sector trips in FY 2011. Sector vessels were also required to have a sector-funded at-sea monitoring program in place by FY 2012. Framework Adjustment 45 (FW 45) to the FMP, which is expected to be effective May 1, 2011, revises several DSM requirements. Proposed changes to the DSM program in FW 45 would include an increase in the DSM coverage level for FY 2011 and a requirement for dockside monitors to board vessels after offload to verify that all catch has been offloaded.

Regulations at 50 CFR 648.87(b)(4) describe the criteria for the approval of service providers interested in offering dockside and/or at-sea monitoring services to sectors. These include informational requirements that providers must include in applications for approval to NMFS. Additionally, once approved, service providers must be able to document having met performance requirements specified by the regulations (§ 648.87(b)(4)(ii)) during the FY, including required coverage levels, in order to maintain eligibility. NMFS can disapprove any previously approved service provider at anytime during the FY through notice in writing to the individual service provider if the service provider ceases to meet the performance standards. NMFS approved service providers for FY 2010 based upon the completeness of their application addressing the information requirements specified in the regulations (§ 648.87(b)(4)(i)), and a determination of the applicant's ability to perform the duties and responsibilities of a sector monitoring service provider.

To approve service providers for FY 2011 (beginning May 1, 2011), NMFS specified that FY 2011 applications from approved FY 2010 service providers must demonstrate that the regulatory performance requirements had been met for the first two quarters of FY 2010 (through October 31, 2010), in addition to providing the minimum informational requirements. NMFS received complete applications from two service providers intending to provide dockside and/or at-sea monitoring services to sectors in FY 2011, two service providers intending to provide only dockside monitoring services, and one service provider intending to provide only at-sea monitoring services. All five of these providers were previously approved and provided dockside and/or at-sea monitoring services to sectors in FY 2010. Based on the information provided by the FY 2011 applications, the Regional Administrator has approved the following service providers as eligible to provide dockside monitoring services to sectors in FY 2011:

- A.I.S., Inc., 89 North Water Street, New Bedford, MA 02747, phone 508–990–9054, fax 508–990–9055, Web site *http://www.aisobservers.com.*
- MRAG Americas, 65 Eastern Ave., Unit B2C, Essex, MA 01929, phone 978–768–3880, fax 978–768–3878, Web site *http://www.mragamericas.com.*
- Saltwater Inc., 733 N. Street, Anchorage, AK 99501, phone 907–276–3241, fax 907–258–5999, Web site *http://www.saltwaterinc.com.*
- Atlantic Catch Data Ltd., 99 Wyse Road, Suite 815, Dartmouth, Nova Scotia, CANADA B3A 4S5, phone 1–902–422–4745, fax 1–902–422–9780, website *http://www.atlanticcatchdata.ca.*

The Regional Administrator has approved the following service providers as eligible to provide at-sea monitoring services to sectors in FY 2011:

- A.I.S., Inc.
- MRAG Americas
- East West Technical Services, LLC, 34 Batterson Drive, New Britain, CT 06053, phone 860–223–5165, fax 860–223–6005, Web site *http://www.ewts.com.*

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 13, 2011.

**Margo Schulze-Haugen,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011–9458 Filed 4–18–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA074**

### Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

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

**ACTION:** Notice; proposed incidental take authorization; request for comments.

**SUMMARY:** NMFS has received an application from United Launch Alliance (ULA), for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting *Delta Mariner* operations, cargo unloading activities, and harbor maintenance activities related to the Delta IV/Evolved Expendable Launch Vehicle (Delta IV/EELV) at south Vandenberg Air Force Base, CA (VAFB). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to ULA to incidentally harass, by Level B harassment only, three species of marine mammals during the specified activity.

**DATES:** Comments and information must be received no later than May 19, 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 20910–3225. The mailbox address for providing e-mail comments is *ITP.Cody@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

*Instructions*: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#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*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 713–2289.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce 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 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 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. NMFS must publish a notice in the **Federal Register** within 30 days of its determination to 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 August 4, 2010, from ULA requesting the taking by harassment, of small numbers of marine mammals, incidental to conducting *Delta Mariner* harbor operations for one year. After addressing comments from NMFS, ULA modified its application and submitted a revised application on February 11, 2011. NMFS determined that application complete and adequate on March 29, 2011.

These activities (*i.e.,* transport vessel operations, cargo movement activities, and harbor maintenance dredging) will support Delta IV/EELV launch activities from the Space Launch Complex at VAFB Harbor and would occur in the vicinity of a known pinniped haul out site (Small Haul-out Site #1) located at 34° 33.192′ N, 120° 36.580′ W.

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations and the, cargo movement activities, the increased presence of personnel, and harbor maintenance dredging may have the potential to cause California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and Northern elephant seals (*Mirounga angustirostris*) hauled out on Small Haul-out Site #1 to flush into VAFB Harbor or to cause a short-term behavioral disturbance for marine mammals in the proposed area. These types of disturbances are the principal means of marine mammal taking associated with these activities and ULA has requested an authorization to take 1,089 Pacific harbor seals; 72 California sea lions; and 43 Northern elephant seals by Level B harassment only.

To date, NMFS has issued eight, 1-year, Incidental Harassment Authorizations (IHAs) to ULA for the conduct of the same activities from 2002 to 2010, with the last IHA expiring on September 3, 2010 (74 FR 46742, September 11, 2009). ULA did not

conduct any operations between 2003 and 2008, and accordingly, was not required to conduct any monitoring activities related to harbor maintenance or *Delta Mariner* operations. After a 6-year hiatus, ULA commenced harbor maintenance activities in July 2009. This is ULA's ninth request for an IHA and the monitoring results from the 2009 and 2010 operating seasons appear in the Proposed Monitoring section of this notice.

**Description of the Specified Geographic Region**

The proposed activities will take place in or near the VAFB harbor located on the central coast of California at 34° 33′ N, 120° 36′ W in the northeast Pacific Ocean. The harbor is approximately 2.5 miles (mi) (4.02 kilometers (km)) south of Point Arguello, CA and approximately 1 mi (1.61 km) south of the nearest marine mammal rookery.

**Description of the Specified Activity**

ULA proposes to conduct Delta IV/EELV activities (transport vessel operations, harbor maintenance dredging, and cargo movement activities) between June 6, 2011 and June 5, 2012. The Delta IV/EELV launch vehicle is comprised of a common booster core (CBC), an upper stage, and a payload fairing. The size of the CBC requires it to be transported to the VAFB launch site by a specially designed vessel, the *Delta Mariner.* To allow safe operation of the *Delta Mariner,* maintenance dredging within a harbor located in Zone 6 of the Western Space and Missile Center (WSMC) in the Pacific Ocean (33 CFR 334.1130(a)(2)(vi)), ULA requires that the harbor undergo maintenance on a periodic basis.

**Delta Mariner Operations**

The Delta Mariner is a 312-foot (ft) (95.1-meter (m)) long, 84-ft (25.6-m) wide, steel-hulled, ocean-going vessel capable of operating at an 8-ft (2.4-m) draft. It is a roll-on, roll-off, self-propelled ship with an enclosed watertight cargo area, a superstructure forward, and a ramp at the vessel's stern.

*Delta Mariner* off-loading operations and associated cargo movements within the harbor would occur at a maximum frequency of four times per year. The 8,000-horsepower vessel would enter the harbor stern first at 1.5 to 2 knots (1.72 mi per hour (mph)) during daylight hours at high tide, approaching the wharf at less than 0.75 knot (less than one mph). At least one tugboat will always accompany the *Delta Mariner* during visits to the VAFB harbor. Departure will occur under the previously-stated conditions.

**Harbor Maintenance Activities**

ULA's must perform maintenance dredging annually or twice per year, depending on the hardware delivery schedule. To accommodate the *Delta* Mariner's draft, ULA would need to remove up to 5,000 cubic yards of sediment per dredging cycle. Dredging would involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Dredge operations, from set-up to tear-down, would continue 24-hours a day for approximately 35 days.

ULA provides a more detailed description of the work proposed for 2011–2012 in the application and the Final U.S. Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001) which are available upon request (see **ADDRESSES**).

**Cargo Movement Activities**

Removal of the CBC from the vessel requires the use of an elevating platform transporter (EPT). The EPT is powered by a diesel engine manufactured by Daimler-Chrysler AG (Mercedes), model OM442A, 340HP. ULA would limit cargo unloading activities to periods of high tide. It takes approximately two hours to remove the first CBC from the cargo bay and six hours to remove a complement of three CBCs. It would take up to two additional hours to remove remaining cargo which may consist of two upper stages, one set of fairings, and one payload attach fitting. The total of 10 hours includes time required to move the flight hardware to the staging area. Flight hardware items, other than the CBCs, are packaged in containers equipped with retractable casters and tow bars. ULA would tow these containers off the vessel by a standard diesel truck tractor. Noise from the ground support equipment will be muted while inside the cargo bay and will be audible to marine mammals only during the time the equipment is in the harbor area. Cargo movement operations would occur for approximately 43 days (concurrent with the harbor maintenance activities).

**Acoustic Source Specifications**

A discussion of associated noise sources from the *Delta Mariner,* harbor maintenance equipment, and the EPT follows this section.

*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 is 1 μPa for under water, and the units for SPLs are dB re: 1 μPa. The commonly used reference pressure is 20 μPa for in air, and the units for SPLs are dB re: 20 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 Vessel Noise*

Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering the vessel into position and a brief sound from the cargo bay door when it becomes disengaged. ULA has not performed any in situ sound measurements outside the vessel.

*Characteristics of the Harbor Maintenance and Cargo Movement Noise*

ULA estimates that the noise levels emanating from within 50 ft (15.2 m) of the dredging and construction equipment (*i.e.,* backhoe, water truck, and clamshell dredge and the cargo moving equipment (EPT and roll-off truck transporter) would range from 56 to 95 dB re: 20 μPa. ULA presents the equipment noise levels as well as measurements of the ambient background noise (35 to 48 dB re: 20 μPa at 250 ft (76.2 m)) measured at the dock area in Table 1.2–1 of the application.

*Characteristics of the Elevating Platform Transporter*

The received level of the EPT's diesel engine when running at mid-speed was approximately 85 dB re: 20 μPa at less

than 20 ft (less than 6.1 m). Prior to movement, the EPT operator sounds the horn to alert personnel in close proximity to the EPT that it is about to operate. The EPT operation procedure requires two short beeps of the horn (approximately one-third seconds each) prior to starting the ignition. Sound level measurements for the horn ranged from 84 to 112 dB re: 20 μPa measured at 25 ft (7.6 m) from the source and 62 to 70 dB re: 20 μPa measured at 200 ft (60.9 m) from the source. ULA recorded source levels from the side of the vehicle where the horn is mounted.

*Characteristics of the Diesel Truck Tractor*

The received sound level for the truck tractor was approximately 87 dB re: 20 μPa at 50 ft (15.2 m) while it towed the CBCs and remaining cargo items. NMFS expects that the Space Launch Complex structures will mute the noise generated by the ground support equipment while operations are conducted within the cargo bay.

**Description of Marine Mammals in the Area of the Proposed Specified Activity**

The marine mammal species most likely to be harassed incidental to conducting *Delta Mariner* operations, cargo unloading activities, and harbor maintenance activities at VAFB are the California sea lion, the Pacific Harbor seal, and the northern elephant seal. NMFS refers the public to Carretta *et al.,* (2010) and Allen and Angliss (2010) for general information on these species which are presented below this section. The publications are available at the following URLs: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2010_draft.pdf* and *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010_draft.pdf* respectively.

*California Sea Lion*

California sea lions are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The California sea lion includes three subspecies: *Z. c. wollebaeki* (on the Galapagos Islands), *Z. c. japonicus* (in Japan, but now thought to be extinct), and Z. *c. californianus* (found from southern Mexico to southwestern Canada; herein referred to as the California sea lion). The subspecies is comprised of three stocks: (1) The U.S. stock, beginning at the U.S./Mexico border extending northward into Canada; (2) the western Baja California stock, extending from the U.S./Mexico border to the southern tip of the Baja California peninsula; and (3) the Gulf of California stock, which includes the Gulf of California from the southern tip of the Baja California peninsula and across to the mainland and extends to southern Mexico (Lowry *et al.,* 1992). Adult males can weigh up to 860 pounds (lbs) (390 kilograms (kg)); and an adult female averages approximately 242 lbs (110 kg).

In 2009, the estimated population of the U.S. stock of California sea lion ranged from 141,842 to 238,000 animals and the maximum population growth rate was 6.52 percent when pup counts from El Niño years (1983, 1984, 1992, 1993, 1998, and 2003) were removed (Carretta *et al.,* 2010).

California sea lion breeding areas are on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.,* 2010). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between four and 10 months of age (NMML, 2010).

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.

The largest concentrations of California sea lions in the vicinity of VAFB occur at Lion Rock, an islet located at (34°53′ N, 120°39′ W) offshore of Point Sal, CA approximately 24 mi (38.6 km) north of the VAFB harbor. Historical observations have noted the presence of at least 100 California sea lions hauled out during any season at Lion Rock (Roest, 1995); small groups migrating south along the VAFB coastline commencing in April (Tetra Tech, 1997); juveniles hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997); and finally, large groups of sea lions migrating north along the VAFB coastline beginning in August (Tetra Tech, 1997). ULA has observed juvenile sea lions hauled-out with harbor seals along southern VAFB sites from July through September (Tetra Tech, 1997).

*Pacific Harbor Seal*

Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P. v. stejnegeri* in the western North Pacific, near Japan, and *P. v. richardsi* in the northeast Pacific Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental United States, including: the outer coastal waters of Oregon and Washington States; Washington State inland waters; and Alaska coastal and inland waters.

The estimated population of the California stock of Pacific harbor seals ranged from 31,600 to 34,233 animals and the maximum population growth rate was 3.5 percent (Carretta *et al.*, 2010).

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.*, 2005). Harbor seals mate at sea and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations and rookery size varies from a few pups to many hundreds of pups. The nearest harbor seal rookery relative to the operational area is at Rocky Point, CA approximately one mile (1.61 km) south of the harbor.

ULA estimates that the total population of harbor seals on VAFB is approximately 1,118 (maximum of 500 seals hauled out at one time on south VAFB) based on sighting surveys and telemetry data (Thorson, 2001). The daily haul-out behavior of harbor seals along the southern VAFB coastline is primarily dependent on time of day. The highest numbers of seals haul-out between 1100 and 1600 hours and the seals will occasionally haul out at a beach 250 ft (76.2 m) west of the south VAFB harbor and on rocks outside the harbor breakwater where ULA proposes to conduct *Delta Mariner* operations.

The maximum number of seals present during the 2009 *Delta Mariner* operations was 28, and the maximum number hauled out during the 2002 wharf modification activities was 43, averaging 21 animals per day when tidal

conditions were favorable for hauling out.

*Northern Elephant Seal*

Northern elephant seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska and as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 1,000–2,500 ft (330–800 m) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

Populations of northern elephant seals in the U.S. and Mexico were all originally derived from a few tens or a few hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart *et al.*, 1994). Although movement and genetic exchange continues between rookeries, most elephant seals return to their natal rookeries when they start breeding (Huber *et al.*, 1991). The California breeding population is now demographically isolated from the Baja California population. The estimated population of the California stock of northern elephant seals ranged from 74,913 to 124,000 animals and the maximum population growth rate was 11.7 percent (Carretta *et al.*, 2010).

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.,* 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45oN (Stewart and Huber, 1993; Le Boeuf *et al.*, 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

ULA reports that northern elephant seals do not breed in the VAFB harbor area nor on its offshore islets. However, some juvenile and sub-adult elephant seals, primarily immature males, regularly use some of the VAFB shoreline as haul-outs. The juvenile and sub-adult elephant seals do not haul out in the VAFB harbor area.

ULA has no verified records of elephant seals on VAFB prior to 1998. In 2004, ULA counted a maximum of 188 elephant seals in VAFB; however, they consider this observation to be an outlier, as most on-site surveys have counted less than 10 individuals.

*Other Marine Mammals in the Proposed Action Area*

There are several endangered cetaceans that have the potential to transit in the vicinity of the VAFB harbor including the short-beaked common dolphin (*Delphinus delphis*), the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the gray whale (*Eschrichtius robustus*). NMFS will not consider these species further in this proposed IHA notice as they are typically found farther offshore of the VAFB harbor and are unlikely or rare in the proposed action area.

All of the aforementioned species are found farther offshore than the proposed action area and are not likely to be affected by the *Delta Mariner* operations. Accordingly, NMFS will not consider these species in greater detail.

Other species of pinnipeds species are rare to infrequent along the south VAFB coast during certain times of the year and are unlikely to be harassed by ULA's activities. These three species are: the northern fur seal (*Callorhinus ursinus*), Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lion (*Eumetopias jubatus*). Northern fur seals, Guadalupe fur seals, and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and distribution of these species can be found in the NMFS Stock Assessment Reports at *http://www.nmfs.noaa.gov/pr/sars/*.

California (southern) sea otters (*Enhydra lutris nereis*) are listed as threatened under the ESA and categorized as depleted under the MMPA. The U.S. Fish and Wildlife Service manages this species and NMFS will not consider this species in greater detail within this notice. The proposed IHA will only address requested take authorizations for pinnipeds.

**Potential Effects on Marine Mammals**

Acoustic and visual stimuli generated by: the use of heavy equipment during the *Delta Mariner* off-loading operations and harbor dredging and the increased presence of personnel may have the potential to cause Level B harassment of any pinnipeds hauled out in the VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Based on the measured sounds of construction equipment, such as might be used during ULA's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dB re: 20 μPa of noise would be approximately 72 dB re: 20 μPa at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The EPT produces approximately 85 dB re: 20 μPa, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately ⅓ of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84–112 dB re: 20 μPa at 25 ft (7.6 m) away and 62–70 dB re: 20 μPa at 200 ft (61 m) away. The highest measurement was taken from the side of the vehicle where the horn is mounted. Ambient background noise measured approximately 250 ft (76.2 m) from the beach was estimated to be 35–48 dB re: 20 μPa (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a "looming" visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

According to the MMPA and NMFS' implementing regulations, if harbor activities disrupt the behavioral patterns of harbor seals or sea lions, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (*i.e.,* Level B harassment) and would not cause injury or mortality to marine mammals. On the other hand, startle and alert reactions accompanied by large-scale movements, such as

stampedes into the water of hundreds of animals, may rise to the degree of Level A harassment and could result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or at pupping sites could potentially lead to takes by injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor because, historically, the number of harbor seals hauled out near the site is less than 30 individuals, and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

According to the June 2002 dock modification construction report (ENSRI, 2002), the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to recreational fishing activities, which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks, and there was only one incident of a head alert reaction. Further, the report from the December 2002 dredging activities shows that the number of Pacific harbor seals ranged from zero to 19, and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts, although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

The monitoring report from the 2009 season (July 8 through Sept 21) notes that Pacific harbor seals hauled out in the vicinity were more responsive to visual disturbances than to auditory disturbances. ULA did not observe any behavioral reactions of the harbor seals to equipment start-up. However, observers noted that harbor seals present slowly flushed when they could see equipment moving from their vantage point in the haulout area. On five occasions, harbor seals showed head alerts and on eight occasions, harbor seals entered the water.

NMFS would expect the pinnipeds to return to a haulout site within 60 min of the disturbance (Allen *et al.*, 1985). The effects to pinnipeds appear at the most to displace the animals temporarily from their haul out sites and NMFS does not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of harbor maintenance and *Delta Mariner* operations.

Finally, no operations would occur on pinniped rookeries; therefore, NMFS does not expect mother and pup separation or crushing of pups to occur.

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 Habitat*

NMFS does not anticipate that the proposed operations would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.* fish and invertebrates). NMFS does not anticipate that there would be any physical damage to any habitat. While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible which NMFS considered in further detail earlier in this document, as behavioral modification.

**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.

ULA has based the proposed mitigation measures described herein, to be implemented for the proposed operations, on the following:

(1) Protocols used during previous operations as approved by NMFS; and

(2) Previous IHA applications and IHAs approved and authorized by NMFS.

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, ULA/and or its designees propose to implement the following mitigating measures for marine mammals:

(1) If activities occur during nighttime hours, ULA will turn on lighting equipment before dusk. The lights would remain on for the entire night to avoid startling pinnipeds.

(2) Initiate operations before dusk.

(3) Keep construction noises at a constant level (*i.e.,* not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, ULA would initiate a gradual start-up of activities to ensure a gradual increase in noise levels.

(5) A NMFS-qualified marine mammal observer would visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of ULA's activities (see Monitoring).

(6) The *Delta Mariner* and accompanying vessels would enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks; reducing speed to 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel would enter the harbor stern first, approaching the wharf and moorings at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

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. Our 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 our 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 mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Proposed Monitoring**

*Summary of Previous Monitoring*

ULA complied with the mitigation and monitoring required under the previous authorization for the 2009 and 2010 seasons. In compliance with both IHAs, ULA submitted a final report on the activities at VAFB harbor, covering the period of July 6 through September 21, 2009 and June 2 through 18, 2010. Each IHA required ULA to conduct baseline observations of pinnipeds in the project area prior to initiating project activities; conduct and record observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are 2 ft (0.61 m) or less (*i.e.,* low enough for pinnipeds to haul-out); and conduct post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

During the effective dates of the 2009 IHA, ULA conducted 22 sessions of harbor maintenance and *Delta Mariner* operations which did not exceed the activity levels analyzed under the 2009 authorization. During the July 6 through August 7, 2009 monitoring period, both Pacific harbor seals and California sea lions hauled out within view of the harbor and dock where ULA conducted project activities. ULA reported that the maximum number of harbor seals hauled out each day ranged from one to 28 animals with most using the rocks approximately 540 to 570 ft (164.9 to 173.7 m) south of the harbor area. The maximum number of sea lions present ranged from one to two animals and both sea lions hauled out at either the breakwater and or on a beach southwest of the dock area. On four occasions, harbor seals exhibited head alerts to equipment movement and equipment noise. California sea lions exhibited head alerts on one occasion involving engine noise and engine movement. There was no indication of altered behavior of harbor seals and sea lions in the water due to activities occurring on the dock or barge. ULA routinely observed pinnipeds rafting or swimming within and around the harbor for the duration of the operations. During the September 17–21, 2009 monitoring period for activities associated with cargo delivery for the Delta Mariner, the only observations of pinnipeds hauled out occurred on September 20th. However, the operations concluded by the time that the tide had reached low enough levels (0.51 ft; 0.15 m) for pinnipeds to begin hauling out on the rocks. Table 1 summarizes the pinnipeds' reactions to project-related disturbances in 2009.

TABLE 1—SUMMARY OF PINNIPED REACTIONS TO HARBOR DREDGING AND DELTA MARINER OPERATIONS IN 2009

| 2009 Season | Time | Species | Number hauled out | Disturbance | Head alert | Entered water |
|---|---|---|---|---|---|---|
| Jul 8 | 7:54 | Pacific harbor seal | 10 | Crane arm raised to vertical | 0 | 10 |
| Jul 9 | 8:06 | Pacific harbor seal | 2 | Crane arm movement | 0 | 2 |
| Jul 10 | 7:22 | Pacific harbor seal | 8 | Crane arm movement | 7 | 1 |
| | 7:25 | | 8 | Crane arm movement | 5 | 0 |
| | 7:26 | | 8 | Crane arm movement | 3 | 5 |
| | 7:31 | | 3 | Crane dredges up segment of flexible pipe | 0 | 3 |
| Jul 20 | 8:58 | California sea lion | 1 | Loader engine start and loader movement | 1 | 0 |
| Jul 22 | 7:23 | Pacific harbor seal | 23 | Noise from excavator bucket startles a large number of pelicans. | 12 | 11 |
| Jul 24 | 7:16 | Pacific harbor seal | 24 | Excavator arm moved | 0 | 24 |
| Jul 27 | 9:11 | California sea lion | 2 | Workers walking on breakwater | 0 | 1 |

During the effective dates of the 2010 IHA, ULA conducted 6 sessions of harbor dredging and *Delta Mariner* operations which did not exceed the activity levels analyzed under the 2010 authorization. During the June 2 to 18, 2010 monitoring period, both Pacific harbor seals and California sea lions hauled out within view of the harbor and dock. For the 2010 season, ULA reported that the maximum number of harbor seals hauled out each day ranged from one to 14 animals with most using the rocks approximately 540 to 570 ft (164.9 to 173.7 m) to south of the harbor area. The maximum number of sea lions present ranged from one to two animals with both animals hauled out at the breakwater. Again, there was no indication of altered behavior of Pacific harbor seals and California sea lions in the water due to activities occurring on the dock or in the harbor. Similar to the observations reported for the 2009 season, ULA routinely observed pinnipeds rafting or swimming within and around the harbor for the duration of the project's activities. Table 2 summarizes pinniped reactions to project-related disturbances in 2010.

TABLE 2—SUMMARY OF PINNIPED REACTIONS TO HARBOR DREDGING AND DELTA MARINER OPERATIONS IN 2010

| 2009 Season | Time | Species | Number hauled out | Disturbance | Head alert | Entered water |
|---|---|---|---|---|---|---|
| Jun 17 | 8:52 | Pacific harbor seal | 4 | Crane arm made loud noise | 1 | 2 |
| | 9:03 | Pacific harbor seal | 4 | Crane arm movement—flapping noise | 0 | 2 |

These results support NMFS' original findings that the mitigation measures set forth in the 2009 and 2010 IHAs effected the least practicable adverse impact on the species or stock.

For a complete record of all observations, NMFS refers the reader to the ULA monitoring reports available at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

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.

As part of its 2002 application for an IHA, ULA provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for the 2011 IHA.

A NMFS-qualified and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough (less than or equal to 2 ft (0.61 m) for pinnipeds to haul out

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

NMFS has reviewed the monitoring results from previous operations and has incorporated the results into the analysis of potential effects in this document.

Proposed Reporting

ULA will notify NMFS two weeks prior to initiation of each activity. After the completion of each activity, ULA will submit a draft final monitoring report to NMFS within 120 days to the Director of Office of Protected Resources at NMFS Headquarters. If ULA receives no comments from NMFS on the draft Final Monitoring Report, NMFS would consider the draft Final Monitoring Report to be the Final Monitoring Report.

The final report would provide dates, times, durations, and locations of specific activities, details of pinniped behavioral observations, and estimates of numbers of affected pinnipeds and impacts (behavioral or other). In addition, the report would include information on the weather, tidal state, horizontal visibility, and composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, ULA would report the incident to NMFS immediately.

ULA 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.

**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 harbor maintenance and *Delta Mariner* operations in the VAFB harbor. Based on ULA's previous monitoring reports, with the same activities conducted in the proposed operations area NMFS estimates that approximately 659 Pacific harbor seals, 38 California sea lions, and 5 northern elephant seals could be potentially affected by Level B behavioral harassment over the course of the proposed IHA. NMFS bases the estimates on historical pinniped survey counts from 2001 to 2009 and calculated takes by multiplying the average of the maximum abundance by 43 days. Thus, ULA requests an IHA to incidentally harass approximately 1,089 Pacific harbor seals (15 animals by 43 days), 72 California sea lions (2 animals by 43 days), and 43 northern elephant seals (1 animals by 43 days).

NMFS expects all of the potential takes to be Level B behavioral harassment only. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area due to wave inundation of the haulout area, NMFS expects no injury, serious injury, or mortality to occur.

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." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to:

(1) The number of anticipated mortalities;

(2) The number and nature of anticipated injuries;

(3) The number, nature, and intensity, and duration of Level B harassment; and

(4) The context in which the takes occur.

As mentioned previously, NMFS estimates that three 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, less than two percent) relative to the population size.

NMFS does not anticipate takes by Level A harassment, serious injury, or mortality to occur as a result of ULA's proposed activities, and none are authorized. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed harbor maintenance and *Delta Mariner* operations to avoid the resultant acoustic and visual disturbances. However, NMFS anticipates only short-term behavioral disturbance due to the brief duration of the proposed activities; the availability of alternate areas near the VAFB harbor for pinnipeds to avoid the resultant noise from the maintenance and vessel operations; and that no operations would occur on pinniped rookeries. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact 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 preliminarily finds that the impact of conducting proposed harbor maintenance and vessel operations June 2011 through June 2012, will result in the incidental take of small numbers of marine mammals, by Level B behavioral harassment only, and that the total taking from the ULA's proposed activities will have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action.

**Endangered Species Act (ESA)**

This action will not affect species listed under the ESA that are under NMFS' jurisdiction. VAFB formally consulted with the U.S. Fish and Wildlife Service in 1998 on the possible take of southern sea otters during ULA's harbor activities at south VAFB. A Biological Opinion was issued in August 2001, which concluded that the EELV Program is not likely to jeopardize the continued existence of the southern sea otter, and no injury or mortality is expected. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

**National Environmental Policy Act (NEPA)**

In 2001, the USAF prepared an Environmental Assessment (EA) for Harbor Activities Associated with the Delta IV Program at VAFB. In 2005, NMFS prepared an EA augmenting the information contained in the USAF EA and issued a Finding of No Significant Impact (FONSI) on the issuance of an IHA for ULA's harbor activities in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). ULA's proposed activities and impacts for 2011–2012 are within the scope of NMFS' 2005 EA and FONSI. NMFS has again reviewed the 2005 EA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and NMFS, therefore, intends to reaffirm the 2005 FONSI. A copy of the EA and the FONSI for this activity is available upon request (see **ADDRESSES**).

Dated: April 13, 2011.

**James H. Lecky,**

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

[FR Doc. 2011–9459 Filed 4–18–11; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

The following notice of scheduled meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** The Commission has scheduled a meeting for the following date: April 27, 2011 at 9:30 a.m.

**PLACE:** Three Lafayette Center, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission has scheduled this meeting to consider various rulemaking matters, including the issuance of proposed rules and the approval of final rules. The Commission may also consider and vote on dates and times for future meetings. Agendas for each scheduled meeting will be made available to the public and posted on the Commission's Web site at *http://www.cftc.gov* at least seven (7) days prior to the meeting. In the event that the time or date of the meeting changes, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

**CONTACT PERSON FOR MORE INFORMATION:** David A. Stawick, Secretary of the Commission, 202–418–5071.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2011–9591 Filed 4–15–11; 4:15 pm]

**BILLING CODE 6351–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2010–0112]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prize Competitions and Contests

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The U.S. Consumer Product Safety Commission ("CPSC" or "Commission") is announcing that a proposed collection of information has been submitted to the U.S. Office of Management and Budget ("OMB") for review and clearance under the Paperwork Reduction Act of 1995.[1]

**DATES:** Fax written comments on the collection of information by May 19, 2011.

**ADDRESSES:** To ensure that comments on the information collection are received, the OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified by Docket No. CPSC–2010–0112. In addition, written comments also should be submitted at *http://www.regulations.gov,* under Docket No. CPSC–2010–0112, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Linda Glatz, Division of Policy and Planning, Office of Information Technology, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814. 301–504–7671. *lglatz@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, the CPSC has submitted the following proposed collection of information to the OMB for review and clearance: Prize Competitions and Contests.

Consistent with the OMB Memorandum on the Use of Challenges and Prizes to Promote Open Government (M–10–11, March 8, 2010), the CPSC intends to establish contests and give awards to members of the public to further the mission of the CPSC. The purposes of the proposed contests and awards range from increasing the knowledge and awareness of schoolchildren of certain safety hazards, such as carbon monoxide poisoning, to recognizing outstanding consumer product safety accomplishments of scientists, business leaders, entrepreneurs, and others who have demonstrated support of the CPSC's product safety mission. The CPSC awards and contests will highlight

[1] The Commission voted 5–0 to approve publication of this notice. Commissioner Anne Northup filed a statement concerning this action which may be viewed on the Commission's Web site at *http://www.cpsc.gov/pr/statements.html* or obtained from the Commission's Office of the Secretary.

excellence in consumer product safety to motivate, inspire, and guide others, including companies across the supply chain; increase the number and diversity of the individuals, organizations, and teams that are addressing consumer product safety issues; educate children and consumers about safety hazards; and attract more public interest and attention to the issues involving consumer product hazards and safety.

The CPSC is seeking OMB approval of a generic clearance for CPSC's contests and awards. The information to be collected from contestants and award nominees or nominators includes contact and background information necessary to conduct a contest or award program. Limited background or biographical information similar to data found on a resume, such as a nominee's education and work experience, may be requested for some contests or awards. Additionally, the substantive entries that are the subject of the contests or awards, such as essays, posters, drawings, and videos; descriptions of products, services, or inventions; and statistics on product or service performance or impact, may be requested from contestants and award nominees.

In the **Federal Register** of November 29, 2010 (75 FR 73047), the CPSC published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows. The CPSC estimates up to 500 contest or award participants each year. The estimated time to complete a contest or award submission is five hours. In addition, approximately 20 applicants may be asked to provide additional information, a task that may take up to two additional hours to complete. Therefore, the total estimated burden on respondents is 2,540 hours ((500 participants × 5 hours/participant) + (20 applicants × 2 hours/participant) = 2,500 hours + 40 hours = 2,540 hours). The estimated total annual cost of the burden to all respondents is $75,463. This estimate is based on the total estimated burden on respondents (2,540 hours) multiplied against an hourly civilian rate of $29.71 per hour, as specified by the Bureau of Labor Statistics, March 2010, All Workers, resulting in a total of $75,463.40, which we have rounded down to $75,463.

We estimate the total annual costs to the federal government as follows. Ten staff members would support the contest or award activities annually. The CPSC tentatively estimates that each staff member will spend approximately six hours per work week for six months on such contest or award activities. Of the 10 staff members, the CPSC tentatively believes that seven will be General Schedule (GS) employees, and three will be Senior Executive Service (SES) employees. Accordingly, for seven GS employees, the estimated total annual cost to the federal government is determined as follows: Seven employees × (six hours/week/employee × 24 weeks) = 1,008 hours. Assuming the employees are at the GS–15, Step 5 level, the hourly rate for such an employee located in the Washington, DC, area is $ 67.21/hour; thus $67.21/hour × 1,008 hours = $67,747.68. For the SES employees, three employees × (six hours/week/employee × 24 weeks) = 432 hours. Assuming the employees are at the Level III level for SES employees, the hourly rate for such an employee is approximately $79.47/hour; thus $79.47/hour × 432 hours = $34,331.04. The estimated total annual cost to the federal government is $67,747.68 + $34,331.04 = $102,078.72, which we have rounded up to $102,079.

Dated: April 14, 2011.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2011–9424 Filed 4–18–11; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Defense Advisory Committee on Military Personnel Testing

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Meeting notice.

**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 that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* Defense Advisory Committee on Military Personnel Testing.

2. *Date:* Thursday, May 19, 2011 and Friday, May 20, 2011.

3. *Time:* From 8:30 a.m. to 4 p.m. on Thursday and 8:30 to Noon on Friday.

4. *Location:* The meeting will be held at the Hyatt Miami at the Blue, 5300 NW. 87th Avenue, Miami, FL 33178.

5. *Purpose of the Meeting:* The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil tests for enlistment.

6. *Agenda:* The agenda includes an overview of current enlistment test development timelines and planned research for the next 3 years.

7. *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, this meeting is open to the public.

8. Committee's Designated Federal Officer or Point of Contact: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

**SUPPLEMENTARY INFORMATION:** Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than May 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jane Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

Dated: April 14, 2011.

**Morgan F. Park,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–9440 Filed 4–18–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Interested persons are invited to submit comments on or before May 19, 2011.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington,

DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 14, 2011.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management.*

**Office of the Secretary**

*Type of Review:* Extension.

*Title of Collection:* U.S. Department of Education Supplemental Information for the SF–424 Form.

*OMB Control Number:* 1894–0007.

*Agency Form Number(s):* SF–424.

*Frequency of Responses:* New Awards.

*Affected Public:* Businesses and other for-profit; Individuals or household; Not-for-profit institutions, State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 19,000.

*Total Estimated Annual Burden Hours:* 6,270.

*Abstract:* The U.S. Department of Education Supplemental Information form for the SF–424 is used together with the SF–424, Application for Federal Assistance. The Supplemental Information form includes several needed data elements/questions that are not included on the SF–424, Application for Federal Assistance. We are requesting extension of the currently approved version of the Supplemental Information form.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3910. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–9453 Filed 4–18–11; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**ACTION:** Correction notice.

**SUMMARY:** On April 13, 2011, the Department of Education published a 30-day comment period notice in the **Federal Register** (Page 20635, Column 3) seeking public comment for an information collection entitled, "Study of the Distribution of Teacher Effectiveness." The title is hereby corrected to "Teacher Quality Distribution Study." The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: April 14, 2011.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management.*

[FR Doc. 2011–9452 Filed 4–18–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** The Department of Education (Department) gives notice that on December 15, 2010 an arbitration panel rendered a decision in the matter of *Richard Thelen* v. *Michigan Commission for the Blind, Case no. R–S/08–7.* This panel was convened by the Department under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, Richard Thelen.

**FOR FURTHER INFORMATION CONTACT:** You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. 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 this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

**Background**

Richard Thelen (Complainant) alleged violations by the Michigan Commission for the Blind, the State licensing agency (SLA), under the Act and its implementing regulations in 34 CFR part 395. The Complainant alleged that the SLA violated the Act, the implementing regulations, and State rules and regulations by suspending his vending operator's license at a vending facility at the Capitol View building under management of The Department of Community Health (DCH) in Lansing, Michigan (Capitol View).

On February 12, 2008, the SLA received a complaint from DCH alleging that the Complainant had poor sanitary conditions at Capitol View and demanded that Complainant be removed from the vending facility. On

February 13, 2008, the SLA suspended Complainant from the facility.

Complainant then requested a full evidentiary hearing from the SLA on this matter. On August 4, 2008, the Administrative Law Judge (ALJ) issued a recommended decision.

On November 14, 2008, the SLA adopted the ALJ's recommendation as final agency action. Specifically, the SLA reimbursed Complainant for lost wages for the five-week period from the time that complainant was removed from his facility in February 2008 until his eligibility was restored in March 2008 and for the two additional weeks for a transition period to allow Complainant after his eligibility restoration to bid on other locations. In addition, the SLA reimbursed Complainant for attorney's fees and service time credit for time lost during his license suspension. Also, the SLA agreed to provide complainant assistance with bidding on new vending locations. However, the SLA denied the complainant's request for punitive damages.

Subsequently, Complainant filed with the Department a request for federal arbitration seeking an appeal of the state fair hearing decision based upon the following reasons: (1) Complainant alleged that the attorney fees of $3,550 awarded to him by the SLA were inadequate; (2) Complainant requested service time for retirement alleging he would have been working if he had not been improperly removed from his facility; (3) Complainant requested that he receive a priority bid for another vending facility; (4) Complainant requested loss wages from the time he was removed from his facility to the time of his retirement several years in the future; (5) Complainant requested punitive damages because he asserts that the SLA summarily removed him from the facility and awarded it to another vendor before the SLA determined the validity of the complaint against him by DCH; and (6) Complainant alleged that he did not receive due process from the SLA.

### Arbitration Panel Decision

After reviewing all of the evidence and testimony, the panel unanimously ruled:

(1) Complainant was entitled to be reimbursed for one Additional hour of attorney's fees in the amount of $200.00.

(2) Complainant's request for service time for Retirement was under the authority of the Office of Retirement Services (ORS) and not under the authority ofthe Federal arbitration panel. However, the SLA agreed to recommend service credit to ORS for the time Complainant's license was suspended.

(3) Complainant was not entitled to receive a a priority bid for another vending facility based upon the findings that a priority bid would harm other vendors and there was no basis to determine that Complainant needed a priority bid in order to be successful.

(4) Complainant's request to be awarded lost wages from the time he was removed from his facility to the time of his later retirement was denied. However, the panel also ruled that the SLA's calculation of lost wages was unreasonable. The SLA had granted Complainant seven weeks of lost wage. This was based on the five-week period from the time the Complainant was removed from his facility in February 2008, until his eligibility was restored in March 2008, plus two additional weeks for a transition period to allow Complainant to bid on other locations once the SLA restored his eligibility.

The panel ruled that the transition period approved by the SLA was unreasonable in that it only allowed Complainant two weeks to bid on another location. Thus, the panel awarded the Complainant an additional ten weeks of lost wages at $192.32 per week or a total amount of $1,923.20.

(5) Complainant's request for punitive damages was denied based upon the finding that the SLA did not engage in extreme or outrageous behavior.

(6) Complainant had not been denied due process concerning his complaint given that any procedural errors were rectified based upon the timely restoration of his eligibility and compensatory damages.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

*Electronic Access to This Document:* 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Dated: April 14, 2011.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2011–9476 Filed 4–18–11; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

## Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** The Department of Education (Department) gives notice that on October 1, 2010, an arbitration panel rendered a decision in the matter of *James Swartz* v. *Alaska Department of Labor and Workforce Development, Division of Vocational Rehabilitation, Case no. R–S/08–11.* This panel was convened by the Department under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, James Swartz.

**FOR FURTHER INFORMATION CONTACT:** You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. 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 this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

### Background

James Swartz (Complainant) alleged that the Alaska Department of Labor and Workforce Development, Division of Vocational Rehabilitation, the State licensing agency (SLA), violated the Act and its implementing regulations in 34 CFR part 395. The Complainant alleged that the SLA improperly administered the transfer and promotion policies and procedures of the Alaska Randolph-Sheppard Vending Facility Program in violation of the Act, the implementing regulations under the Act, and State rules and regulations in considering Complainant's bid to manage a snack bar vending facility at the Nesbett Courthouse (Nesbett), a State court building, located in Anchorage, Alaska.

Specifically, the Complainant, a blind vendor, challenged the SLA's selection of a nonblind severely disabled vendor to operate the snack bar vending facility at Nesbett. In March 2006, the SLA issued a vacancy announcement for Nesbett. Both vendors applied for the Nesbett snack bar vending facility. At that time, the nonblind vendor had been operating the snack bar vending facility at Nesbett as a secondary vending site on a temporary basis, in addition to his primary vending site. Meanwhile, Complainant was operating a vending facility on Federal property as his primary location.

During the selection interview process, the nonblind vendor indicated that he was willing to give up his current primary location and he intended, if selected, to operate the Nesbett snack bar vending facility as his primary site. At the same time, the Complainant indicated that he did not intend to relinquish his primary site, but would manage the Nesbett snack bar vending facility as a secondary vending facility site. After the interview and evaluation of the two vendors according to the SLA's transfer and promotion policies and procedure, the selection committee chose the nonblind vendor for the Nesbett snack bar vending facility.

Complainant then requested a full evidentiary hearing from the SLA on this matter, which was held. On May 29, 2008, the Administrative Law Judge (ALJ) issued a decision ruling that (1) The Nesbett snack bar vending facility is not "other" property as defined by the Federal Randolph-Sheppard Act; (2) The Alaska Chance Act granted blind persons and persons with severe disabilities a priority when seeking a license to operate vending facilities on certain properties, but the Chance Act gave blind persons a first priority or prior right over a nonblind disabled person to operate a vending facility on public property; (3) The SLA's interpretation of its regulations that a vending license is site specific and a qualified vendor may only have one license to operate a facility is reasonable; and (4) The SLA was correct when it granted the nonblind vendor a license to operate the Nesbett snack bar vending facility as his primary site, when there was no blind vendor seeking to operate the Nesbett snack bar vending facility as a primary site.

On July 7, 2008, the SLA issued a decision as final agency action adopting the ALJ's decision. Subsequently, Complainant filed with the Department a request for Federal arbitration seeking an appeal of the State fair hearing decision. On July 31, 2009, the SLA sent a letter to the Department stating that Complainant's request was a "State-only matter" and it did not involve the Federal Randolph-Sheppard Program as the ALJ had ruled that the Nesbett snack bar vending facility was not "other property," as defined under the Act and its implementing regulations.

On August 24, 2009, the Department responded to the SLA's letter stating that this is a Randolph-Sheppard matter under the Act and its implementing regulations and it is up to a Federal arbitration panel to decide on the issue of whether the Nesbett snack bar vending facility is or is not "other property."

A Federal arbitration panel was convened. Prior to the arbitration hearing, the SLA filed with the arbitration panel a Motion for Summary Disposition, arguing that the Nesbett snack bar vending facility was State property not subject to the Act and its implementing regulation. Therefore, the arbitration panel lacked jurisdiction to hear the complaint.

By order dated April 9, 2010, the arbitration panel concluded that there was insufficient evidence before the panel to determine whether the Nesbett snack bar vending facility was "other property" under the Act, but that there were issues of material fact requiring a hearing and, therefore, the panel denied the SLA's motion. The central issue before the arbitration panel was whether the Nesbett State courthouse snack bar vending facility qualified as "other property" within the meaning of the Act and its implementing regulations.

**Arbitration Panel Decision**

The panel heard testimony and concluded that Federal regulations implementing the Act defined "other property" as "property which is not Federal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property." See 34 CFR 395.1(n).

Then, the panel determined that in order for Complainant's claim to prevail, he must prove that the Nesbett snack bar vending facility was established or operated with funds derived directly or indirectly from the operation of vending facilities on Federal property. If Complainant was able to meet that burden, the SLA would concede that the Act applied to the Nesbett snack bar vending facility and the Complainant would be entitled to the priority in operating the Nesbett snack bar vending facility over the claim of the nonblind severely disabled vendor.

After reviewing the entire record, the panel found that the evidence presented at the arbitration hearing demonstrated that the Nesbett State courthouse snack bar vending facility was not established or operated with any funds derived directly or indirectly from the operation of vending facilities on Federal property. Thus, the arbitration panel ruled that the Nesbett State courthouse was not "other property" subject to the Randolph-Sheppard Act and its implementing regulations and, therefore, the SLA's decision did not violate the Act. Accordingly, the arbitration panel denied Complainant's Federal arbitration appeal.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

*Electronic Access to This Document:* The official version of this 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Dated: April 14, 2011.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2011–9477 Filed 4–18–11; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice Inviting Proposals for Taking Ownership and Operation of the TEACH Campaign

**AGENCY:** Office of Innovation and Improvement, U.S. Department of Education.

**ACTION:** Notice inviting proposals for ownership and operation of the TEACH Campaign, including the recruiting effort and the maintenance and operation of the Web Portal.

**SUMMARY:** The U.S. Department of Education (Department) has set a goal for the United States to lead the world in completion of postsecondary education by 2020. The Department recognizes that the most significant in-school-factor in a student's education is his or her teacher, and wants to

encourage a large and diverse group of high-performing individuals to pursue a career in teaching. As one strategy to reach this goal, the Department launched the TEACH Campaign—a national teacher recruiting effort with the goal of contributing to a high-performing and more diverse teaching force by linking prospective teachers to opportunities for preparation, licensure, and employment. Through a contract, the Department launched the TEACH Campaign using traditional media, digital media, social networking, and direct outreach and follow-up activities with potential and current teachers, and supported it with a Web-based portal (*http://www.teach.gov,* and associated social networking accounts with YouTube, Twitter, and Facebook, collectively referred to as the "Web Portal") that is available for use by potential and currently employed teachers for free. The TEACH Campaign (i) targets individuals between the ages of 18 and 25, especially those who are potential high-performers and are among populations under-represented in the teaching profession or are individuals interested in teaching English learners, students with disabilities, or in the fields of science, technology, engineering, and mathematics (STEM) in underserved communities (the targeted populations), (ii) strives to enhance public perception of teachers, and (iii) develops support for new and already-practicing teachers. The TEACH Campaign, which is supported through the Web Portal, is based on a comprehensive strategic communications plan, which includes a clear and identifiable "brand," celebrity and teacher public service announcements that are disseminated through multiple formats (*e.g.,* traditional media, digital media, and social networks), and direct outreach and follow-up activities with potential teachers. The Web Portal is designed to improve the recruitment, training, mentoring, retention, and placement of teachers.

The Department plans to transfer ownership and operation of the TEACH Campaign, including the recruiting effort and the Web Portal, to an entity or to a group of entities that enter into an agreement to collaborate, form a consortium, or establish a partnership (entity) that works outside of the Federal Government and that would, with its own resources, execute and continuously improve an excellent and effective teacher recruiting effort, continuously improve a highly visible and useful Web Portal, and continue to make the Web Portal available at all times to potential and currently employed teachers for free. Through this notice, we are inviting proposals from entities interested in owning and operating the TEACH Campaign, including the recruiting effort and the Web Portal.

**DATES:** To ensure that your proposal receives consideration, it must be received by the Department no later than May 19, 2011. The Department would like to announce the selected entity on or about June 20, 2011.

Please inform us via e-mail by May 4, 2011, if you intend to submit a proposal. Notification of your intent to submit a proposal will help the Department prepare for the review process. Please note that you may still submit a proposal if you do not indicate that you intend to apply. Instructions for submitting a proposal are set forth in the *Submission Requirements* section later in this notice.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should e-mail *TEACHrfp@ed.gov.* If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's proposal remains subject to all other requirements and limitations in this notice.

**FOR FURTHER INFORMATION CONTACT:** For further information, please send an e-mail to: *TEACHrfp@ed.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

Through the fiscal year 2009 appropriation under the School Improvement Programs account, Congress authorized the Secretary of Education to carry out activities, such as the TEACH Campaign, to improve the recruitment, training, mentoring, retention, and placement of teachers in order to improve educational outcomes. See Public Law 111–8, Division F, Title III, March 11, 2009 Omnibus Appropriations Act (Act), Div. F, Title III, School Improvement Programs, Section 4, preceding Division A of the Act, and the House Manager's Explanatory Statement, published in the Congressional Record on February 23, 2009, which provided the following: "In addition, up to $7,500,000 shall be available for the Secretary to use for teacher and principal quality initiatives designed to improve recruitment, training, mentoring, retention, and placement, and transform education outcomes."

To achieve the ultimate goal of once again leading the world in college completion by 2020, the Department, through a contract, designed and created the TEACH Campaign, including the recruiting effort and the Web Portal. The recruiting effort and the Web Portal were designed to, among other things: (i) Increase interest in, and access to, the tools needed to prepare for and secure a position in the teaching profession, particularly among the targeted populations, (ii) enhance the public perception of teachers, and (iii) develop support for new and already practicing teachers. The Web Portal was launched on September 27, 2010, and continues to be available to potential and currently employed teachers for free.

The Department believes that the effectiveness of the TEACH Campaign would be significantly enhanced—that is, would provide long-lasting benefits to the targeted populations and to the Nation—if an outside entity assumed responsibility for ownership and continued operation of the recruiting effort and the Web Portal. The Department will provide the selected entity with information we gathered on the early use of the recruiting effort and the Web Portal, including on the costs of operation and the audiences that have accessed the Web site, in order to help the entity effectively maintain, operate, and enhance the Web Portal and improve the recruiting effort. In addition, the Department will, through a transfer agreement signed by the Department and the selected entity, set forth the terms of the transfer of ownership of the TEACH Campaign, including the recruiting effort and the Web Portal, to an entity outside of the Federal Government, and the operation of the TEACH Campaign and the Web Portal by that entity with the entity's own resources.

Some of the key provisions of the transfer agreement will be the following:

*Objective.* The transfer agreement will require the selected entity to agree that the objective of the TEACH Campaign is to (i) recruit more than a million total new teachers, with an emphasis on recruiting members of the targeted populations, (ii) enhance public perception of teachers, and (iii) develop support for new and already-practicing teachers (the Objective).

*Privacy Policy.* The transfer agreement will require, among other things, that the selected entity include on the Web Portal a privacy policy that protects the privacy of the users and limits the selected entity's use of users' data. Further, the transfer agreement will require that any data about users that the Department transfers to the selected

entity will be used only for the purpose of improving the recruitment, training, mentoring, retention, and placement of teachers in order to improve educational outcomes and will not be used for another purpose without the consent of the user.

*Trademarks.* The Department has created trademarks to identify and distinguish the TEACH Campaign (Trademarks). Pursuant to the transfer agreement, the Department will assign all rights in the Trademarks to the selected entity.

*Web Address.* Because the Web Portal is currently registered as a ".gov" domain and ".gov" domains are only available to official government organizations, the selected entity must re-register the Web Portal with an alternate domain that is appropriate (*e.g.,* .org, .com, or .edu).

*Responsibilities of the Selected Entity.* The duties of the selected entity will include, at a minimum:

(1) Making the Web Portal readily available at all times to potential and currently employed teachers for free.

(2) Solving any implementation problems in order to keep the recruiting effort and the Web Portal operating in at least the same condition in which they are transferred to the entity.

(3) Enhancing the overall quality of the recruiting effort and the Web Portal, including but not limited to, enhancing the content made available through each, such as providing better information on how to become a teacher, on State certification processes, and on job listings.

(4) Identifying new populations of potential teachers (*e.g.,* members of the military, mid-career professionals, and recent retirees), while continuing to reach out to the targeted populations identified in this notice.

(5) Continuing and enhancing outreach efforts designed to elevate the public perception of teaching and through traditional and digital marketing and outreach strategies.

(6) Continuing and enhancing direct outreach and follow-up activities with the targeted populations through, for example, public events and other programming.

(7) Building business partnerships and coalitions that will help develop the TEACH Campaign into a nationally prominent effort to bring a large number of high-performing individuals into the next generation of teachers, including individuals from the targeted populations.

Based on these general expectations, an entity interested in acquiring ownership and operation of the TEACH Campaign, including the recruiting effort and the maintenance and operation of the Web Portal, should submit a proposal that addresses the following key factors, which are designed to enable an entity to demonstrate its ability to recruit teachers, its prior success in executing large projects, and its ability to effectively manage the TEACH Campaign, including the recruiting effort and the Web Portal.

**Key Factors**

The entity's proposal must include evidence that the entity will meet the following factors:

(1) The entity's ability to increase interest in, and access to, the teaching profession among the targeted populations.

(2) The entity's ability to achieve established goals, including prior success in executing large projects.

(3) The entity's planned use of a privacy policy that protects the privacy interests of the users of the Web Portal; limits the entity's use of users' data; and ensures that any data about users that the Department transfers to the selected entity will be used only for the purpose of achieving the Objective and will not be used for any other purpose without the consent of the user.

(4) Demonstrated substantive interest in the goals of the TEACH Campaign and an expertise in recruitment.

(5) Demonstrated capacity to complete a recruiting effort, or demonstrated willingness to enter into a partnership with an entity with such capacity.

(6) Demonstrated organizational capacity to conduct direct outreach to, and follow-up efforts with, the targeted populations, or demonstrated willingness to enter into a partnership with an entity with such capacity.

(7) Entity's capacity to enter into partnerships with partners or potential partners, who can supplement and enhance the entity's ability to establish a successful recruiting effort.

(8) The technological infrastructure and other resources to operate and maintain effectively the TEACH Campaign, including the Web Portal, and make it available to potential and currently employed teachers for free.

(9) A proposed system for measuring the entity's success in meeting the Objective.

(10) Evidence of the entity's fiscal and management capabilities.

The Department will use the following criteria to evaluate how well the proposals submitted in response to this notice address these *Key Factors.*

**Note:** The maximum total score any proposal can receive is 100 points. The maximum score for each criterion is indicated in parentheses below.

**Organizational Capacity (25 Points)**

(1) The extent to which the entity describes a comprehensive vision for an enduring recruiting and outreach effort that at a minimum meets the Objective.

(2) The quality of the proposed project personnel, and the extent to which the personnel have the appropriate qualifications, competencies, and experience in the management of (i) a recruiting effort that includes traditional media, digital media, social networking, and direct outreach and follow-up activities with prospective teachers, and (ii) the operation and maintenance of the Web Portal in a manner that achieves the Objective.

(3) The extent to which the entity (i) has the technological and financial resources, and skills to maintain and operate the TEACH Campaign, including the Web Portal, and ensure that the Web Portal is made available to potential and currently employed teachers for free, (ii) has the capacity to develop and execute a recruiting effort that includes traditional media, digital media, social networking, and direct outreach and follow-up activities with prospective teachers and (iii) has the resources and capability to meet the Objective.

(4) The extent to which the entity demonstrates the ability to enter into partnerships and coalitions that will help develop the project into a nationally prominent movement to recruit a large, high-performing and diverse group of individuals into the next generation of teachers.

**Management Plan (25 Points)**

(1) The extent to which the entity provides a comprehensive description of the proposed plan in a clear and sequential fashion for (i) accomplishing all of the responsibilities listed in the *Responsibilities of the Selected Entity* section of this notice, (ii) effectively managing the TEACH Campaign, including the recruiting effort and the Web Portal, and (iii) enhancing and continuing operation of the recruiting effort and the Web Portal.

(2) The extent to which the entity's proposed system for evaluating its success in meeting the Objective is likely to produce data that accurately measure its success in recruiting more than a million total new teachers, including teachers from the targeted populations.

(3) The extent to which the entity's privacy policy to protect the users of the Web Portal is effective, limits the entity's use of users' data, and ensures

that any data about users that the Department transfers to the selected entity will be used only for the purpose of improving the recruitment, training, mentoring, retention, and placement of teachers in order to improve educational outcomes and will not be used for any other purpose without the consent of the user.

(4) The extent to which the time commitments of the entity's staff are appropriate to operate and maintain the TEACH Campaign, including the Web Portal, and an effective recruiting effort that includes traditional media, digital media, social networking, and direct outreach and follow-up activities with prospective teachers.

**Outreach Efforts (25 Points)**

(1) The quality of the entity's marketing and outreach plan for the TEACH Campaign, which includes a description of the goals of raising the public perception of teachers and of the TEACH Campaign's Objective.

(2) The extent to which the entity demonstrates the ability and prior success in executing large efforts of this type.

(3) The extent to which the entity demonstrates strong familiarity with and success in using traditional media, digital media, and social media campaigns and how it plans to maintain active communities via social media networks such as Facebook, Twitter, email lists, and bulletin boards to encourage new users to engage with the TEACH Campaign and encourage return visits to the Web Portal.

(4) The extent to which the entity demonstrates a thorough understanding of the targeted populations of potential and current teachers.

(5) The quality of the entity's plan for continuing and enhancing direct outreach and follow-up activities with the targeted populations (through, for example, organizing public events and other programming).

**The Web Portal (25 Points)**

(1) The quality of the entity's plan and vision for the enhancement and continued operation of the Web Portal.

(2) The extent to which the entity demonstrates that it has the technological and financial resources and skills to maintain and operate the Web Portal, and to ensure that the Web portal is made available to potential and currently employed teachers for free in perpetuity.

(3) The extent to which the entity demonstrates the capability to aggregate content and data regarding the full cycle of becoming a teacher (*e.g.,* teacher preparation institutions, scholarships, State certification processes, and job listings) and publish and maintain up-to-date and useful information for potential and current teachers.

(4) The extent to which the entity demonstrates the ability to integrate the Web Portal into off-line (*e.g.,* radio, print, and television) and on-line (*e.g.,* search engine, video, and video games) advertising and promotion campaigns.

(5) The extent to which the entity provides credible evidence that the management of personnel, partners and potential partners, physical resources, activities, and work production will result in a robust and high-quality Web Portal with a 99.99 percent "uptime rate" exclusive of published maintenance periods and inclusive of clear communication to users of what to expect in the event of technical difficulties.

(6) The quality of the entity's plan for monitoring and evaluating the intended use, effectiveness, and improvements of the Web Portal.

**Interests of the Federal Government**

To protect the Department's interests in the TEACH Campaign, including the Web Portal and the Trademarks, the selected entity must provide a written assurance executed by an appropriate officer that—

(1) The entity acknowledges that the Department will assign to the selected entity ownership and operation of the TEACH Campaign, including the Web Portal and all rights and interests it possesses in the data and content therein, as well as the Trademarks, including all rights and interests possessed therein.

(2) The entity agrees to own and operate the TEACH Campaign, including the Web Portal and the Trademarks, consistent with its proposal and with the purposes and provisions of this notice.

(3) The entity agrees, per calendar year, to submit three quarterly reports and an annual report regarding the operation, audience, and use of the TEACH Campaign, including the Web Portal, in such detail as the Department specifies in the transfer agreement until the Department and the entity mutually agree in writing that the selected entity achieved the Objective.

(4) The entity acknowledges that if it fails to comply with the transfer agreement at any time prior to achieving the Objective, all rights and interests in all data and content of the TEACH Campaign, including the Web Portal, and any improvements thereto; all intellectual property rights, including the Trademarks; and all databases needed to operate the TEACH Campaign and the Web Portal will revert back to the Department at no cost to the Department (Reversion).

In the event of a Reversion, the Department can transfer ownership, operation, and interests in the TEACH Campaign, the Web Portal, and the Trademarks, to another entity in accordance with a notice published in the **Federal Register**.

**Termination of Certain Rights, Duties, and Obligations**

All duties, obligations, and restrictions of the selected entity, as specified in the transfer agreement, including, but not limited to, the selected entity's obligation to provide quarterly and annual reports to the Department, and the Department's right to repossess the TEACH Campaign, including the Web Portal and the Trademarks, will end upon the Department's and the selected entity's mutual written determination that the selected entity achieved the Objective.

**Availability of Funds**

The Department anticipates that there will not be any Federal funds available to support the TEACH Campaign, including the Web Portal, once ownership and operation are transferred from the Federal Government to the selected entity. Upon the transfer, the TEACH Campaign, including the Web Portal will be the sole responsibility of the selected entity to bear all costs associated with ownership and operation thereof.

**Other Required Information in Proposals**

Proposals submitted in response to this notice also must include the following information:

(1) Name, address, and contact information for the entity submitting the proposal.

(2) Mission statement of the entity.

(3) The entity's current Web site URL.

(4) The most recent audited information (such as that contained in a consolidated financial statement) regarding the financial condition and other capabilities of the entity.

(5) Description of existing programs owned and operated by the entity that could support the entity in achieving the goals of the TEACH Campaign, including the Web Portal.

*Submission Requirements:* Interested entities must submit a proposal for owning and operating the TEACH Campaign, including the recruiting effort and the maintenance and operation of the Web Portal, that addresses the factors and associated criteria outlined in this notice.

Proposals may be submitted electronically or in paper format by mail or hand delivery. We will not consider any proposal that does not comply with the deadline requirements.

a. *Electronic Submission of Proposals.* If you choose to submit your proposal to us electronically, email your proposal to *TEACHrfp@ed.gov.* Please note the following:

- You must complete the electronic submission of your proposal by 4:30 p.m., Washington, DC time, on May 19, 2011.
- You will not receive additional point value because you submit your proposal in electronic format, nor will we penalize you if you submit your proposal in paper format.
- You must submit all documents electronically, including any narrative sections and all other attachments to your proposal 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.
- Prior to submitting your electronic proposal, you may wish to print a copy of it for your records.
- We may request that you provide us original signatures on other documents at a later date.

*Deadline Date Extension in Case of System Unavailability:* If you are prevented from electronically submitting your proposal on the deadline date because *TEACHrfp@ed.gov* was unavailable, we will grant you an extension of one business day to enable you to transmit your proposal electronically, by mail, or by hand delivery. We will grant this extension if—

- *TEACHrfp@ed.gov* was unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or
- *TEACHrfp@ed.gov* was unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may e-mail *TEACHrfp@ed.gov.* If *TEACHrfp@ed.gov* was unavailable due to technical problems with the system and, therefore, the proposal deadline is extended, an e-mail will be sent to all entities that informed the Department that they intended to submit a proposal.

Extensions referred to in this section apply only to the unavailability of *TEACHrfp@ed.gov.* If *TEACHrfp@ed.gov* is available, and, for any reason, you are unable to submit your proposal electronically, you may submit your proposal in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Copies of Proposals by Mail.* If you submit your proposal in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your proposal, on or before the proposal deadline date, to the Department at the following address: The TEACH Campaign, Office of Innovation and Improvement, U.S. Department of Education, 400 Maryland Ave., SW., Washington, DC 20202–5930.

You must show proof of mailing consisting of one of the following:

(i) A legibly dated U.S. Postal Service postmark.

(ii) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

(iv) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your proposal through the U.S. Postal Service, note that the Department does not accept either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

If your proposal is postmarked after the proposal deadline date, we will not consider your proposal.

**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 Copies of Proposals by Hand Delivery.* If you submit your proposal in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your proposal by hand, on or before the deadline date, to the Department at the following address: The TEACH Campaign, Office of Innovation and Improvement, U.S. Department of Education, 400 Maryland Ave., SW., Washington, DC 20202–5930.

The Department accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Electronic Access to This Document:* 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

Dated: April 14, 2011.

**James H. Shelton, III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2011–9485 Filed 4–18–11; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Advisory Board

**AGENCY:** Department of Energy.

**ACTION:** Notice of call for nominations for appointment to the Environmental Management Advisory Board.

**SUMMARY:** This notice constitutes an open call to the public to submit nominations for membership on the Environmental Management Advisory Board.

**DATES:** Nominations will be accepted through May 13, 2011.

**ADDRESSES:** Environmental Management Advisory Board (EM–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Kristen G. Ellis, Designated Federal Officer, Environmental Management Advisory Board (EM–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Phone (202) 586–5810; fax (202) 586–0293 or e-mail: *kristen.ellis@em.doe.gov.*

**SUPPLEMENTARY INFORMATION:** The Department of Energy's (DOE) Office of Environmental Management is accepting nominations through May 13, 2011, to fill vacancies on its Environmental Management Advisory Board (EMAB or Board). Applicants with expertise in project management, acquisition management, human capital management, environmental management and engineering, or other related fields are preferred; this expertise may be drawn from service in the private sector, academia, research institutions, professional organizations, or local and state governments. The Board seeks to have a balanced membership so that a diversity of perspectives is represented on the issues that come before it. This membership

balance is not static, however, and may change depending on the work of the committee.

EMAB provides advice to the Assistant Secretary for the Office of Environmental Management on a broad range of programmatic issues, including project management and oversight, cost/benefit analyses, program performance, human capital development, and contracts and acquisition strategies. The Board is comprised of up to 15 members who are appointed by the Secretary of Energy as special Government employees or as representatives of entities including, among others, research facilities, academic institutions, regulatory entities, and stakeholder organizations, should the Board's tasks require such representation.

EMAB meets the criteria for, and is subject to the Federal Advisory Committee Act (FACA), Title 5, Appendix of the United States Code. Members are selected in accordance with FACA requirements and serve on an uncompensated, volunteer basis. Members, however, may be reimbursed in accordance with the Federal Travel Regulations for per diem and travel expenses incurred while attending Board meetings.

Any interested person or organization may nominate qualified individuals for membership. Self-nominations are also welcome. Nominations must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current occupation, position, address and daytime telephone number. Nominations can be sent by U.S. Mail or electronically to Ms. Kristen G. Ellis, Designated Federal Officer, at the address above. For further information on EMAB, please visit *http://www.em.doe.gov/emab* or contact Ms. Ellis directly.

Issued at Washington, DC on April 13, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–9470 Filed 4–18–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, May 11, 2011, 5 p.m.

**ADDRESSES:** Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

**FOR FURTHER INFORMATION CONTACT:** Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

1. Recommendation Development—Industrial Sites Corrective Action Unit 566 (rail cars).
2. Greater-Than-Class-C Draft Environmental Impact Statement (EIS) Committee Update.
3. Site-Wide EIS Update.
4. Groundwater Update.

*Public Participation:* The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC on April 14, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–9468 Filed 4–18–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, May 5, 2011, 6 p.m.

**ADDRESSES:** Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

*Tentative Agenda:*

- Call to Order, Introductions, Review of Agenda.
- Approval of March Minutes.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Introduction of FLOUR Presentation.
- Administrative Issues:
  - Subcommittee Updates.
- Public Comments.
- Final Comments.
- Adjourn.

*Public Participation:* The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least seven days in advance of the meeting at the phone

number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on April 13, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–9472 Filed 4–18–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. CW–018]**

### Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to LG From the Department of Energy Residential Clothes Washer Test Procedure

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Decision and order.

**SUMMARY:** The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CW–018) that grants to LG Electronics U.S.A., Inc. (LG) a waiver from the DOE clothes washer test procedure for determining the energy consumption of clothes washers for the basic models set forth in its petition for waiver. Under today's decision and order, LG shall be required to test and rate these clothes washers with larger clothes containers using an alternate test procedure that takes the larger capacities into account when measuring energy consumption.

**DATES:** This Decision and Order is effective April 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611, *E-mail: mailto:Michael.Raymond@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796, *E-mail: mailto:mailto:Elizabeth.Kohl@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants LG a waiver from the applicable clothes washer test procedure in 10 CFR part 430, subpart B, appendix J1 for certain basic models of clothes washers with capacities greater than 3.8 cubic feet, provided that LG tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits LG from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on April 12, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

### Decision and Order

*In the Matter of:* LG Electronics U.S.A., Inc. (Case No. CW–018)

### I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), 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, which includes the residential clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for automatic and semi-automatic clothes washers is set forth in 10 CFR part 430, subpart B, appendix J1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On December 23, 2010, DOE issued enforcement guidance for large-capacity clothes washers. This guidance can be found on DOE's Web site at *http://www.gc.energy.gov/documents/LargeCapacityRCW_guidance_122210.pdf.*

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

## II. LG's Petition for Waiver: Assertions and Determinations

On January 19, 2011, LG submitted the instant petition for waiver and application for interim waiver (petition) from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. This petition expands the model list set forth in LG's initial petition CW–016, for which DOE granted a waiver on March 1, 2011. 76 FR 11233. LG requested a waiver to test its residential clothes washers with basket volumes greater than 3.8 cubic feet on the basis of the test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet. LG's instant petition and DOE's grant of interim waiver were also published in the **Federal Register** on March 1, 2011. 76 FR 11440. DOE received no comments on the LG petition.

LG's petition seeks a waiver from the DOE test procedure because the mass of the test load used in the procedure, which is based on the basket volume of the test unit, is currently not defined for basket sizes greater than 3.8 cubic feet. LG manufactures basic models with capacities greater than 3.8 cubic feet, and it is for these basic models that LG seeks a waiver from DOE's test procedure. In addition, if the current maximum test load mass is used to test these products, the tested energy use would be less than the actual energy usage, and could evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. LG requests that DOE grant a waiver for testing and rating based on a revised Table 5.1, the same table as set forth in the waiver granted to LG on March 1, 2011. 76 FR 11233. The table is identical to the Table 5.1 found in DOE's clothes washer test procedure Notice of Proposed Rulemaking (NOPR). 75 FR 57556 (September 21, 1010).

As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Previously, DOE granted a test procedure waiver to Whirlpool for three of Whirlpool's clothes washer models with container capacities greater than 3.8 cubic feet. 75 FR 69653 (November 15, 2010). This notice contained an alternate test procedure, which extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 cubic feet. On December 10, 2010, DOE granted a similar waiver to General Electric Company (GE), which used the same alternate test procedure. 75 FR 76968. DOE has also granted waivers to Electrolux (76 FR 11440 (March 2, 2011)) and Samsung (76 FR 13169 (March 10, 2011)). All decisions and orders for this type of product use the Table 5.1 values presented in DOE's NOPR.

## III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the LG petition for waiver. The FTC staff did not have any objections to granting a waiver to LG.

## IV. Conclusion

After careful consideration of all the material that was submitted by LG, the waivers granted to Whirlpool, GE, Samsung and Electrolux, as well as previously to LG, the clothes washer test procedure rulemaking, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the LG Electronics U.S.A., Inc. (Case No. CW–018) is hereby granted as set forth in the paragraphs below.

(2) LG shall not be required to test or rate the following LG models on the basis of the current test procedure contained in 10 CFR part 430, subpart B, appendix J1. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below.

| Model | Brand |
|---|---|
| WM3360H* * * | LG. |
| WM3550H* * * | LG. |
| WM3150H** | LG. |
| WM3975H* * * | LG. |
| WM3985H* * * | LG. |
| WT4901C* | LG. |
| 2947#00# | Kenmore. |

(3) LG shall be required to test the products listed in paragraph (2) above according to the test procedures for clothes washers prescribed by DOE at 10 CFR part 430, appendix J1, except that, for the LG products listed in paragraph (2) only, the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

| Container volume | | Minimum load | | Maximum load | | Average load | |
|---|---|---|---|---|---|---|---|
| cu. ft. | liter | lb | kg | lb | kg | lb | kg |
| ≥ < | ≥ < | | | | | | |
| 0–0.8 | 0–22.7 | 3.00 | 1.36 | 3.00 | 1.36 | 3.00 | 1.36 |
| 0.80–0.90 | 22.7–25.5 | 3.00 | 1.36 | 3.50 | 1.59 | 3.25 | 1.47 |
| 0.90–1.00 | 25.5–28.3 | 3.00 | 1.36 | 3.90 | 1.77 | 3.45 | 1.56 |
| 1.00–1.10 | 28.3–31.1 | 3.00 | 1.36 | 4.30 | 1.95 | 3.65 | 1.66 |
| 1.10–1.20 | 31.1–34.0 | 3.00 | 1.36 | 4.70 | 2.13 | 3.85 | 1.75 |
| 1.20–1.30 | 34.0–36.8 | 3.00 | 1.36 | 5.10 | 2.31 | 4.05 | 1.84 |
| 1.30–1.40 | 36.8–39.6 | 3.00 | 1.36 | 5.50 | 2.49 | 4.25 | 1.93 |
| 1.40–1.50 | 39.6–42.5 | 3.00 | 1.36 | 5.90 | 2.68 | 4.45 | 2.02 |
| 1.50–1.60 | 42.5–45.3 | 3.00 | 1.36 | 6.40 | 2.90 | 4.70 | 2.13 |
| 1.60–1.70 | 45.3–48.1 | 3.00 | 1.36 | 6.80 | 3.08 | 4.90 | 2.22 |
| 1.70–1.80 | 48.1–51.0 | 3.00 | 1.36 | 7.20 | 3.27 | 5.10 | 2.31 |
| 1.80–1.90 | 51.0–53.8 | 3.00 | 1.36 | 7.60 | 3.45 | 5.30 | 2.40 |
| 1.90–2.00 | 53.8–56.6 | 3.00 | 1.36 | 8.00 | 3.63 | 5.50 | 2.49 |
| 2.00–2.10 | 56.6–59.5 | 3.00 | 1.36 | 8.40 | 3.81 | 5.70 | 2.59 |
| 2.10–2.20 | 59.5–62.3 | 3.00 | 1.36 | 8.80 | 3.99 | 5.90 | 2.68 |
| 2.20–2.30 | 62.3–65.1 | 3.00 | 1.36 | 9.20 | 4.17 | 6.10 | 2.77 |
| 2.30–2.40 | 65.1–68.0 | 3.00 | 1.36 | 9.60 | 4.35 | 6.30 | 2.86 |
| 2.40–2.50 | 68.0–70.8 | 3.00 | 1.36 | 10.00 | 4.54 | 6.50 | 2.95 |

TABLE 5.1—TEST LOAD SIZES—Continued

| Container volume | | Minimum load | | Maximum load | | Average load | |
|---|---|---|---|---|---|---|---|
| cu. ft. | liter | lb | kg | lb | kg | lb | kg |
| ≥ < | ≥ < | | | | | | |
| 2.50–2.60 | 70.8–73.6 | 3.00 | 1.36 | 10.50 | 4.76 | 6.75 | 3.06 |
| 2.60–2.70 | 73.6–76.5 | 3.00 | 1.36 | 10.90 | 4.94 | 6.95 | 3.15 |
| 2.70–2.80 | 76.5–79.3 | 3.00 | 1.36 | 11.30 | 5.13 | 7.15 | 3.24 |
| 2.80–2.90 | 79.3–82.1 | 3.00 | 1.36 | 11.70 | 5.31 | 7.35 | 3.33 |
| 2.90–3.00 | 82.1–85.0 | 3.00 | 1.36 | 12.10 | 5.49 | 7.55 | 3.42 |
| 3.00–3.10 | 85.0–87.8 | 3.00 | 1.36 | 12.50 | 5.67 | 7.75 | 3.52 |
| 3.10–3.20 | 87.8–90.6 | 3.00 | 1.36 | 12.90 | 5.85 | 7.95 | 3.61 |
| 3.20–3.30 | 90.6–93.4 | 3.00 | 1.36 | 13.30 | 6.03 | 8.15 | 3.70 |
| 3.30–3.40 | 93.4–96.3 | 3.00 | 1.36 | 13.70 | 6.21 | 8.35 | 3.79 |
| 3.40–3.50 | 96.3–99.1 | 3.00 | 1.36 | 14.10 | 6.40 | 8.55 | 3.88 |
| 3.50–3.60 | 99.1–101.9 | 3.00 | 1.36 | 14.60 | 6.62 | 8.80 | 3.99 |
| 3.60–3.70 | 101.9–104.8 | 3.00 | 1.36 | 15.00 | 6.80 | 9.00 | 4.08 |
| 3.70–3.80 | 104.8–107.6 | 3.00 | 1.36 | 15.40 | 6.99 | 9.20 | 4.17 |
| 3.80–3.90 | 107.6–110.4 | 3.00 | 1.36 | 15.80 | 7.16 | 9.40 | 4.26 |
| 3.90–4.00 | 110.4–113.3 | 3.00 | 1.36 | 16.20 | 7.34 | 9.60 | 4.35 |
| 4.00–4.10 | 113.3–116.1 | 3.00 | 1.36 | 16.60 | 7.53 | 9.80 | 4.45 |
| 4.10–4.20 | 116.1–118.9 | 3.00 | 1.36 | 17.00 | 7.72 | 10.00 | 4.54 |
| 4.20–4.30 | 118.9–121.8 | 3.00 | 1.36 | 17.40 | 7.90 | 10.20 | 4.63 |
| 4.30–4.40 | 121.8–124.6 | 3.00 | 1.36 | 17.80 | 8.09 | 10.40 | 4.72 |
| 4.40–4.50 | 124.6–127.4 | 3.00 | 1.36 | 18.20 | 8.27 | 10.60 | 4.82 |
| 4.50–4.60 | 127.4–130.3 | 3.00 | 1.36 | 18.70 | 8.46 | 10.80 | 4.91 |
| 4.60–4.70 | 130.3–133.1 | 3.00 | 1.36 | 19.10 | 8.65 | 11.00 | 5.00 |
| 4.70–4.80 | 133.1–135.9 | 3.00 | 1.36 | 19.50 | 8.83 | 11.20 | 5.10 |
| 4.80–4.90 | 135.9–138.8 | 3.00 | 1.36 | 19.90 | 9.02 | 11.40 | 5.19 |
| 4.90–5.00 | 138.8–141.6 | 3.00 | 1.36 | 20.30 | 9.20 | 11.60 | 5.28 |
| 5.00–5.10 | 141.6–144.4 | 3.00 | 1.36 | 20.70 | 9.39 | 11.90 | 5.38 |
| 5.10–5.20 | 144.4–147.2 | 3.00 | 1.36 | 21.10 | 9.58 | 12.10 | 5.47 |
| 5.20–5.30 | 147.2–150.1 | 3.00 | 1.36 | 21.50 | 9.76 | 12.30 | 5.56 |
| 5.30–5.40 | 150.1–152.9 | 3.00 | 1.36 | 21.90 | 9.95 | 12.50 | 5.65 |
| 5.40–5.50 | 152.9–155.7 | 3.00 | 1.36 | 22.30 | 10.13 | 12.70 | 5.75 |
| 5.50–5.60 | 155.7–158.6 | 3.00 | 1.36 | 22.80 | 10.32 | 12.90 | 5.84 |
| 5.60–5.70 | 158.6–161.4 | 3.00 | 1.36 | 23.20 | 10.51 | 13.10 | 5.93 |
| 5.70–5.80 | 161.4–164.2 | 3.00 | 1.36 | 23.60 | 10.69 | 13.30 | 6.03 |
| 5.80–5.90 | 164.2–167.1 | 3.00 | 1.36 | 24.00 | 10.88 | 13.50 | 6.12 |
| 5.90–6.00 | 167.1–169.9 | 3.00 | 1.36 | 24.40 | 11.06 | 13.70 | 6.21 |

NOTES: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

(4) Representations. LG may make representations about the energy use of its clothes washer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in LG's petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR 430.62.

Issued in Washington, DC, on April 12, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2011–9474 Filed 4–18–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. CW–019]**

### Energy Conservation Program for Consumer Products: Notice of Petition for Waiver of Samsung Electronics America, Inc. From the Department of Energy Residential Clothes Washer Test Procedure, and Grant of Interim Waiver

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of petition for waiver and application for interim waiver, notice of grant of interim waiver, and request for comments.

**SUMMARY:** This notice announces receipt of and publishes the Samsung Electronics America, Inc. (Samsung) petition for waiver and application for

interim waiver (hereafter, "petition") from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of clothes washers. Today's notice also grants an interim waiver of the clothes washer test procedure. Through this notice, DOE also solicits comments with respect to the Samsung petition.

**DATES:** DOE will accept comments, data, and information with respect to the Samsung petition until, but no later than May 19, 2011.

**ADDRESSES:** You may submit comments, identified by case number CW–019, by any of the following methods:

- *Federal eRulemaking Portal:http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests @ee.doe.gov* Include "Case No. CW–019" in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

*Instructions:* All submissions received should include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy to the petitioner, pursuant to 10 CFR 430.27(d). The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 18600 Broadwick Street, Rancho Dominguez, CA 90220.

According 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 two copies to DOE: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

*Docket:* For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar clothes washer products. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

## I. Background and Authority

**SUPPLEMENTARY INFORMATION:** Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 287–6111. *E-mail: Jennifer.Tiedemanmailto:@hq.doe.gov.*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), 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, which includes the clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). The test procedure for automatic and semi-automatic clothes washers is contained in 10 CFR part 430, subpart B, appendix J1.

The regulations set forth in 10 CFR part 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(a)(2). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

On December 23, 2010, DOE issued enforcement guidance on the application of recently granted waivers

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

for large-capacity clothes washers and announced steps to improve the waiver process and refrain from certain enforcement actions. This guidance can be found on DOE's Web site at *http://www.gc.energy.gov/1661.htm.*

## II. Application for Interim Waiver and Petition for Waiver

On July 20, 2010, Samsung filed an initial petition for waiver and application for interim waiver from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. In particular, Samsung requested a waiver to test its clothes washers with basket volumes greater than 3.8 cubic feet on the basis of the aforementioned residential test procedures, using a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet. This petition was granted on September 23, 2010.75 FR 57937. On February 11, 2011, Samsung filed the instant petition for waiver and application for interim waiver to expand the number of models subject to the alternative test procedure set forth in the company's July 2010 petition for waiver.

Samsung's current petition seeks a waiver from the DOE test procedure because the mass of the test load used in the procedure, which is based on the basket volume of the test unit, is currently not defined for basket sizes greater than 3.8 cubic feet. Samsung manufactures basic models with capacities greater than 3.8 cubic feet, and it is for these basic models that Samsung seeks a waiver from DOE's test procedure.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. Samsung requests that DOE grant a waiver for testing and rating based on a revised Table 5.1, the same table as set forth in the interim waiver granted to Samsung on September 23, 2010. 75 FR 57937. The table is identical to the Table 5.1 found in DOE's recently published clothes washer test procedure Notice of Proposed Rulemaking (NOPR). 75 FR 57556 (September 21, 1010).

An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g)). DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. Previously, however, DOE granted an interim test procedure waiver to Whirlpool for three of Whirlpool's clothes washer models with container capacities greater than 3.8 cubic feet. 71 FR 48913 (August 22, 2006). The notice contained an alternate test procedure, which extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 cubic feet. DOE granted waivers to Whirlpool (75 FR 69653 (November 15, 2010)), General Electric Company (GE) (75 FR 76968 (December 10, 2010)), LG (76 FR 11233 (March 1, 2011)), and Electrolux (76 FR 11440 (March 2, 2011)) for products with capacities larger than currently specified in the test procedure. As stated above, DOE granted a previous interim waiver to Samsung on September 23, 2010.

The current DOE test procedure specifies test load sizes only for machines with capacities up to 3.8 cubic feet, and DOE believes that extending the linear relationship between test load size and container capacity to larger capacities is valid. In addition, testing a basic model with a capacity larger than 3.8 cubic feet using the current procedure could evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Based on these considerations, and the waivers granted to Whirlpool, GE, Electrolux and LG, it appears likely that the petition for waiver will be granted. As a result, DOE grants an interim waiver to Samsung for the basic models of clothes washers with container volumes greater than 3.8 cubic feet specified in its petition for waiver, pursuant to 10 CFR 430.27(g). DOE also provides for the use of an alternative test procedure extending the linear relationship between test load size and container capacity, described below. Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for the specified Samsung clothes washer basic models, subject to the specifications and conditions below.

1. Samsung shall not be required to test or rate the specified clothes washer products on the basis of the test procedure under 10 CFR part 430 subpart B, appendix J1.

2. Samsung shall be required to test and rate the specified clothes washer products according to the alternate test procedure as set forth in section IV, "Alternate Test Procedure."

The interim waiver applies to the following basic model groups: WA5471 * * *, WA5461 * * *, WA5451 * * *, WA5441 * * *, WA5431 * * *

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may or may not be manufactured by the petitioner. Samsung may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes washers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR 430.62.

## III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for Samsung in a subsequent Decision and Order.

The alternate procedure approved today is intended to allow Samsung to make valid representations regarding its clothes washers with basket capacities larger than provided for in the current test procedure. This alternate test procedure is based on the expanded Table 5.1 of Appendix J1 that appears in DOE's clothes washer test procedure NOPR.75 FR 57556 (September 21, 1010).

During the period of the interim waiver granted in this notice, Samsung shall test its clothes washer basic models according to the provisions of 10 CFR part 430 subpart B, appendix J1, except that the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

| Container volume | | Minimum load | | Maximum load | | Average load | |
|---|---|---|---|---|---|---|---|
| cu. ft. | liter | lb | kg | Lb | kg | lb | kg |
| ≥ < | ≥ < | | | | | | |
| 0–0.8 | 0–22.7 | 3.00 | 1.36 | 3.00 | 1.36 | 3.00 | 1.36 |
| 0.80–0.90 | 22.7–25.5 | 3.00 | 1.36 | 3.50 | 1.59 | 3.25 | 1.47 |
| 0.90–1.00 | 25.5–28.3 | 3.00 | 1.36 | 3.90 | 1.77 | 3.45 | 1.56 |
| 1.00–1.10 | 28.3–31.1 | 3.00 | 1.36 | 4.30 | 1.95 | 3.65 | 1.66 |
| 1.10–1.20 | 31.1–34.0 | 3.00 | 1.36 | 4.70 | 2.13 | 3.85 | 1.75 |
| 1.20–1.30 | 34.0–36.8 | 3.00 | 1.36 | 5.10 | 2.31 | 4.05 | 1.84 |
| 1.30–1.40 | 36.8–39.6 | 3.00 | 1.36 | 5.50 | 2.49 | 4.25 | 1.93 |
| 1.40–1.50 | 39.6–42.5 | 3.00 | 1.36 | 5.90 | 2.68 | 4.45 | 2.02 |
| 1.50–1.60 | 42.5–45.3 | 3.00 | 1.36 | 6.40 | 2.90 | 4.70 | 2.13 |
| 1.60–1.70 | 45.3–48.1 | 3.00 | 1.36 | 6.80 | 3.08 | 4.90 | 2.22 |
| 1.70–1.80 | 48.1–51.0 | 3.00 | 1.36 | 7.20 | 3.27 | 5.10 | 2.31 |
| 1.80–1.90 | 51.0–53.8 | 3.00 | 1.36 | 7.60 | 3.45 | 5.30 | 2.40 |
| 1.90–2.00 | 53.8–56.6 | 3.00 | 1.36 | 8.00 | 3.63 | 5.50 | 2.49 |
| 2.00–2.10 | 56.6–59.5 | 3.00 | 1.36 | 8.40 | 3.81 | 5.70 | 2.59 |
| 2.10–2.20 | 59.5–62.3 | 3.00 | 1.36 | 8.80 | 3.99 | 5.90 | 2.68 |
| 2.20–2.30 | 62.3–65.1 | 3.00 | 1.36 | 9.20 | 4.17 | 6.10 | 2.77 |
| 2.30–2.40 | 65.1–68.0 | 3.00 | 1.36 | 9.60 | 4.35 | 6.30 | 2.86 |
| 2.40–2.50 | 68.0–70.8 | 3.00 | 1.36 | 10.00 | 4.54 | 6.50 | 2.95 |
| 2.50–2.60 | 70.8–73.6 | 3.00 | 1.36 | 10.50 | 4.76 | 6.75 | 3.06 |
| 2.60–2.70 | 73.6–76.5 | 3.00 | 1.36 | 10.90 | 4.94 | 6.95 | 3.15 |
| 2.70–2.80 | 76.5–79.3 | 3.00 | 1.36 | 11.30 | 5.13 | 7.15 | 3.24 |
| 2.80–2.90 | 79.3–82.1 | 3.00 | 1.36 | 11.70 | 5.31 | 7.35 | 3.33 |
| 2.90–3.00 | 82.1–85.0 | 3.00 | 1.36 | 12.10 | 5.49 | 7.55 | 3.42 |
| 3.00–3.10 | 85.0–87.8 | 3.00 | 1.36 | 12.50 | 5.67 | 7.75 | 3.52 |
| 3.10–3.20 | 87.8–90.6 | 3.00 | 1.36 | 12.90 | 5.85 | 7.95 | 3.61 |
| 3.20–3.30 | 90.6–93.4 | 3.00 | 1.36 | 13.30 | 6.03 | 8.15 | 3.70 |
| 3.30–3.40 | 93.4–96.3 | 3.00 | 1.36 | 13.70 | 6.21 | 8.35 | 3.79 |
| 3.40–3.50 | 96.3–99.1 | 3.00 | 1.36 | 14.10 | 6.40 | 8.55 | 3.88 |
| 3.50–3.60 | 99.1–101.9 | 3.00 | 1.36 | 14.60 | 6.62 | 8.80 | 3.99 |
| 3.60–3.70 | 101.9–104.8 | 3.00 | 1.36 | 15.00 | 6.80 | 9.00 | 4.08 |
| 3.70–3.80 | 104.8–107.6 | 3.00 | 1.36 | 15.40 | 6.99 | 9.20 | 4.17 |
| 3.80–3.90 | 107.6–110.4 | 3.00 | 1.36 | 15.80 | 7.16 | 9.40 | 4.26 |
| 3.90–4.00 | 110.4–113.3 | 3.00 | 1.36 | 16.20 | 7.34 | 9.60 | 4.35 |
| 4.00–4.10 | 113.3–116.1 | 3.00 | 1.36 | 16.60 | 7.53 | 9.80 | 4.45 |
| 4.10–4.20 | 116.1–118.9 | 3.00 | 1.36 | 17.00 | 7.72 | 10.00 | 4.54 |
| 4.20–4.30 | 118.9–121.8 | 3.00 | 1.36 | 17.40 | 7.90 | 10.20 | 4.63 |
| 4.30–4.40 | 121.8–124.6 | 3.00 | 1.36 | 17.80 | 8.09 | 10.40 | 4.72 |
| 4.40–4.50 | 124.6–127.4 | 3.00 | 1.36 | 18.20 | 8.27 | 10.60 | 4.82 |
| 4.50–4.60 | 127.4–130.3 | 3.00 | 1.36 | 18.70 | 8.46 | 10.80 | 4.91 |
| 4.60–4.70 | 130.3–133.1 | 3.00 | 1.36 | 19.10 | 8.65 | 11.00 | 5.00 |
| 4.70–4.80 | 133.1–135.9 | 3.00 | 1.36 | 19.50 | 8.83 | 11.20 | 5.10 |
| 4.80–4.90 | 135.9–138.8 | 3.00 | 1.36 | 19.90 | 9.02 | 11.40 | 5.19 |
| 4.90–5.00 | 138.8–141.6 | 3.00 | 1.36 | 20.30 | 9.20 | 11.60 | 5.28 |
| 5.00–5.10 | 141.6–144.4 | 3.00 | 1.36 | 20.70 | 9.39 | 11.90 | 5.38 |
| 5.10–5.20 | 144.4–147.2 | 3.00 | 1.36 | 21.10 | 9.58 | 12.10 | 5.47 |
| 5.20–5.30 | 147.2–150.1 | 3.00 | 1.36 | 21.50 | 9.76 | 12.30 | 5.56 |
| 5.30–5.40 | 150.1–152.9 | 3.00 | 1.36 | 21.90 | 9.95 | 12.50 | 5.65 |
| 5.40–5.50 | 152.9–155.7 | 3.00 | 1.36 | 22.30 | 10.13 | 12.70 | 5.75 |
| 5.50–5.60 | 155.7–158.6 | 3.00 | 1.36 | 22.80 | 10.32 | 12.90 | 5.84 |
| 5.60–5.70 | 158.6–161.4 | 3.00 | 1.36 | 23.20 | 10.51 | 13.10 | 5.93 |
| 5.70–5.80 | 161.4–164.2 | 3.00 | 1.36 | 23.60 | 10.69 | 13.30 | 6.03 |
| 5.80–5.90 | 164.2–167.1 | 3.00 | 1.36 | 24.00 | 10.88 | 13.50 | 6.12 |
| 5.90–6.00 | 167.1–169.9 | 3.00 | 1.36 | 24.40 | 11.06 | 13.70 | 6.21 |

NOTES: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

## IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Samsung's petition for waiver from certain parts of the test procedure that apply to clothes washers and grants an interim waiver to Samsung. DOE is publishing Samsung's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of clothes washers with capacities larger than the 3.8 cubic feet specified in the current DOE test procedure. DOE is interested in receiving comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and any other alternate test procedure.

Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy to the petitioner, whose contact

information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on April 12, 2011.

**Kathleen Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.*

February 11, 2011

Catherine Zoi, Energy Efficiency and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Re: Petition for Waiver and Application for Interim Waiver, Clothes Washers Capacity Greater than 3.8 Cubic Feet

Dear Assistant Secretary Zoi: Samsung Electronics America, Inc., a subsidiary of Samsung Electronics Co., Ltd. (Samsung), respectfully submits this Petition for Waiver and Application for Interim Waiver to the Department of Energy (DOE) for the testing of clothes washers with capacity greater than 3.8 cubic feet.

The 10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Additionally, 10 CFR Part 430.27(b)(2) allows an applicant to request an Interim Waiver if economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.

**Reasoning**

In order to meet current market demands, Samsung designed and will be marketing clothes washers with capacities greater than 3.8 cubic feet. Samsung expects that the majority of Samsung clothes washers will be greater than 3.8 cubic feet in capacity. The current test procedure, Appendix J1 to Subpart B of Part 430, Table 5.1, does not contain load sizes for capacities greater than 3.8 cubic feet, preventing Samsung from appropriately testing clothes washer models with capacity greater than 3.8 cubic feet. The Department recognized this test method deficiency in the Interim Waivers granted to Electrolux (75 FR 81258), LG (75 FR 71680), Whirlpool (75 FR 69653), General Electric (75 FR 57915), and Samsung (75 FR 57937).

The nature of this Application for Interim Waiver and Petition for Waiver does not differ from Samsung's original Application for Interim Waiver and Petition for Waiver as published in 75 FR 57937.

**Conclusion**

On the grounds that current test methods for clothes washers will prevent Samsung from testing its new clothes washer models, and given that DOE had already granted Samsung an Interim Waiver in 75 FR 57937, Samsung requests that DOE expeditiously extend the expanded Table 5.1, as prescribed in 75 FR 57937, to the following Samsung clothes washer models:

| |
|---|
| WA5471* * * |
| WA5461* * * |
| WA5451* * * |
| WA5441* * * |
| WA5431* * * |

**Affected Persons**

Primarily affected persons in the clothes washers category include Alliance Laundry Systems, LLC., BSH Home Appliances Corp., Electrolux Home Products, Equator, Fisher & Paykel Appliances, Inc., GE Appliances, Haier America Trading, L.L.C., LG Electronics Inc., Miele Appliances, Inc., and Whirlpool Corporation. Samsung will notify all these entities as required by the Department's rules and provide them with a version of this Petition. A copy was also provided to the Association of Home Appliance Manufacturers (AHAM).

Sincerely,

**Michael Moss**

*Director of Corporate Environmental Affairs*

[FR Doc. 2011–9475 Filed 4–18–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12758–003]**

### BOST5 Hydroelectric Company, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12758–003.

c. *Date filed:* March 28, 2011.

d. *Applicant:* BOST5 Hydroelectric Company, LLC (BOST5).

e. *Name of Project:* Red River Lock & Dam No. 5 Hydroelectric Project.

f. *Location:* The proposed project would be located at the existing Army Corps of Engineer's (Corps) Red River Lock & Dam No. 5 on the Red River, near the town of Ninock near the City of Shreveport, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contacts:* Mr. Douglas A. Spalding, BOST5 Hydroelectric Company, LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133.

i. *FERC Contact:* Jeanne Edwards (202) 502–6181 or by e-mail at *jeanne.edwards@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* June 11, 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 (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "e-Filing" link. For a simpler method of submitting text only comments, click on "eComment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an

original and eight copies to: Kimberly D. Bose, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing U.S. Army Corps of Engineers (Corps) Red River Lock and Dam No. 5, and operate consistent with the Corps current operation policy. The proposed project consists of: (1) An excavated 416-foot-long headrace channel to convey water from the upstream Pool No. 5 of the Red River to a 301-foot-long by 90-foot-wide concrete powerhouse located northeast of the end of the existing overflow weir; (2) an excavated 495-foot-long tailrace channel to discharge water from the powerhouse to the downstream Pool No. 4 of the Red River; (3) one 28.1-megawatt (MW) horizontal Kaplan bulb turbine/generator unit; (4) one 7-mile-long, 34.5-kilovolt (kV) overhead transmission line leading from the project's powerhouse and connecting to Central Louisiana Electric Company's new substation; and (5) appurtenant facilities. The proposed project would generate about 129,400 megawatt-hours (MWh) annually which would be sold to a local utility.

o. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Louisiana State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

| | |
|---|---|
| Issue Deficiency Letter ..... | May 2011. |
| Issue Acceptance Letter ... | September 2011. |
| Issue Scoping Document 1 for comments. | October 2011. |
| Request Additional Information (if necessary). | December 2011. |
| Notice of application is ready for environmental analysis. | April 2012. |
| Notice of the availability of the EA. | April 2013. |

Dated: April 12, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–9375 Filed 4–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2056–049]**

### Xcel Energy; Notice of Application of Recreational Resources Management Plan Update for the St. Anthony 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:* Recreational Resources Management Plan Update.

b. *Project No.:* 2056–049.

c. *Date Filed:* December 20, 2010.

d. *Applicant:* Xcel Energy.

e. *Name of Project:* St. Anthony Falls Hydroelectric Project.

f. *Location:* The project is located on the Mississippi River, in Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mathew Miller, Xcel Energy, 1414 West Hamilton Ave., P.O. Box 8, Eau Claire, WI 54702–0008, (715) 737–1353, *matthew.j.miller@excelenergy.com.*

i. *FERC Contact:* Mark Ivy: (202) 502–6864; e-mail: *Mark.Ivy@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 12, 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–2056–049) on any comments, motions, or recommendations filed.

k. *Description of Request:* Xcel Energy, licensee of the St. Anthony Falls Hydroelectric Project, has filed a Recreational Resources Management Plan (RRMP) update for the project. The RRMP is a comprehensive plan to develop and manage Water Power Park which is located on project lands.

l. *Location 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 email 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: April 12, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–9374 Filed 4–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC11–63–000.
*Applicants:* UniSource Energy Development Company, UNS Electric, Inc.
*Description:* Application pursuant to section 203 of the Federal Power Act and request for expedited consideration and approval by June 6, 2011 re UniSource Energy Development Company *et al.*
*Filed Date:* 04/07/2011.
*Accession Number:* 20110411–0202.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 28, 2011.

*Docket Numbers:* EC11–64–000.
*Applicants:* EnergyConnect, Inc., Johnson Controls, Inc.
*Description:* Authorization of Disposition of Jurisdictional Facilities Under section 203 of the FPA and Request for Waivers of Certain Filing Requirements and Request for Shortened Comment Period and Expedited Consideration.
*Filed Date:* 04/11/2011.
*Accession Number:* 20110411–5227.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 2, 2011.

*Docket Numbers:* EC11–65–000.
*Applicants:* Entegra Power Group LLC, Gila River Power, L.P., Gila River Energy Supply LLC.
*Description:* Joint Application for Authorization Under section 203 of the Federal Power Act, Request for Waiver of Certain Commission Requirements, and Request for Expedited Treatment of Entegra Power Group LLC, *et al.*
*Filed Date:* 04/11/2011.
*Accession Number:* 20110411–5229.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 2, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER05–1232–034.
*Applicants:* J.P. Morgan Ventures Energy Corporation.
*Description:* Supplemental Information of J.P. Morgan Ventures Energy Corporation re: Updated Market Power Analysis and Order No. 697 Compliance Filing.
*Filed Date:* 04/07/2011.
*Accession Number:* 20110407–5160.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 28, 2011.

*Docket Numbers:* ER10–1790–002.
*Applicants:* BP Energy Company.
*Description:* BP Energy Company submits tariff filing per 35: Baseline MBR Tariff Filing of BP Energy Company to be effective 8/1/2010.
*Filed Date:* 04/11/2011.
*Accession Number:* 20110411–5000.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 02, 2011.

*Docket Numbers:* ER10–2719–003; ER10–2718–003; ER10–2578–005; ER10–2633–003; ER10–2570–003; ER10–2717–003; ER10–3140–003.
*Applicants:* Cogen Technologies Linden Venture, L.P., Fox Energy Company LLC, Birchwood Power Partners, L.P., East Coast Power Linden Holding, LLC, EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Shady Hills Power Company LLC.
*Description:* Notice of Non-Material Change in Status of East Coast Power Linden Holding, LLC *et al.*
*Filed Date:* 04/11/2011.
*Accession Number:* 20110411–5125.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 2, 2011.

*Docket Numbers:* ER11–3329–000.
*Applicants:* Gila River Energy Supply LLC.
*Description:* Gila River Energy Supply LLC submits tariff filing per 35.1: Gila River Energy Supply MBR Application to be effective 5/11/2011.
*Filed Date:* 04/11/2011.
*Accession Number:* 20110411–5096.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 2, 2011.

*Docket Numbers:* ER11–3330–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): G931–G996–H100 MPFCA to be effective 4/12/2011.
*Filed Date:* 04/11/2011.
*Accession Number:* 20110411–5102.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 2, 2011.

*Docket Numbers:* ER11–3331–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Submission of Change to SPS Pricing Zone Rate to be effective 1/1/2011.
*Filed Date:* 04/11/2011.
*Accession Number:* 20110411–5136.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 02, 2011.

*Docket Numbers:* ER11–3332–000.
*Applicants:* Electric Energy, Inc.
*Description:* Electric Energy, Inc. submits tariff filing per 35: Baseline Tariff Revisions to Remove BREC Restriction to be effective 4/11/2011.
*Filed Date:* 04/11/2011.
*Accession Number:* 20110411–5137.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 2, 2011.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do

not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 12, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–9406 Filed 4–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG11–61–000.
*Applicants:* Paulding Wind Farm II LLC.
*Description:* Self-Certification of EWG Status of Paulding Wind Farm II LLC.
*Filed Date:* 02/25/2011.
*Accession Number:* 20110225–5126.
*Comment Date:* 5 p.m. Eastern Time on Friday, March 18, 2011.

*Take notice that the* Commission received the following electric rate filings:

*Docket Numbers:* ER11–2780–000.
*Applicants:* Safe Harbor Water Power Corporation.
*Description:* Safe Harbor Waste Power Corp. Supplement to Updated Market Power Analysis.
*Filed Date:* 02/22/2011.
*Accession Number:* 20110222–5240.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 15, 2011.

*Docket Numbers:* ER11–2878–001.
*Applicants:* ISO New England Inc., Vermont Electric Power Company, Inc.
*Description:* ISO New England Inc. submits tariff filing per 35.17(b): Amendment to Change Requested Effective Date to be effective 4/1/2011.
*Filed Date:* 02/25/2011.
*Accession Number:* 20110225–5013.
*Comment Date:* 5 p.m. Eastern Time on Friday, March 18, 2011.

*Docket Numbers:* ER11–2928–001.
*Applicants:* Florida Power & Light Company.
*Description:* Florida Power & Light Company submits tariff filing per 35.17(b): Errata to FPL Rate Schedule FERC No. 318 between FPL and FKEC_FINAL_2_25_2011 to be effective 12/31/9998.
*Filed Date:* 02/25/2011.
*Accession Number:* 20110225–5139.
*Comment Date:* 5 p.m. Eastern Time on Friday, March 18, 2011.

*Docket Numbers:* ER11–2948–000.
*Applicants:* San Diego Gas & Electric Company.
*Description:* San Diego Gas & Electric Company submits tariff filing per 35.13(a)(2)(iii: SGIP & LGIP Revisions to SDG&E's Open Access Tariff to be effective 2/24/2011.
*Filed Date:* 02/25/2011.
*Accession Number:* 20110225–5043.
*Comment Date:* 5 p.m. Eastern Time on Friday, March 18, 2011.

*Docket Numbers:* ER11–2949–000.
*Applicants:* Arizona Public Service Company.
*Description:* Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Removal of Reliability Management System from the APS LGIA. to be effective 4/26/2011.
*Filed Date:* 02/25/2011.
*Accession Number:* 20110225–5087.
*Comment Date:* 5 p.m. Eastern Time on Friday, March 18, 2011.

*Docket Numbers:* ER11–2950–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Notices of Termination of Service Agreement No. 3 under FERC Electric Tariff Volume No. 5 and PG&E Rate Schedule FERC Nos. 212 and 214.
*Filed Date:* 02/24/2011.
*Accession Number:* 20110224–5175.
*Comment Date:* 5 p.m. Eastern Time on Thursday, March 17, 2011.

*Docket Numbers:* ER11–2951–000.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp submits tariff filing per 35.13(a)(2)(iii: City of Nephi Interconnection Agreement to be effective 2/25/2011.
*Filed Date:* 02/24/2011.
*Accession Number:* 20110224–5177.
*Comment Date:* 5 p.m. Eastern Time on Thursday, March 17, 2011.

*Take notice that the* Commission received the following electric securities filings:

*Docket Numbers:* ES11–19–000.
*Applicants:* Northern Maine Independent System Administrator, Inc.
*Description:* Application of the Northern Maine Independent System Administrator, Inc. for Authorization To Issue Securities Pursuant to section 204 of the Federal Power Act.
*Filed Date:* 02/25/2011.
*Accession Number:* 20110225–5088.
*Comment Date:* 5 p.m. Eastern Time on Friday, March 18, 2011.

*Take notice that the* Commission received the following open access transmission tariff *filings:*

*Docket Numbers:* OA07–35–005.
*Applicants:* Cleco Power LLC.
*Description:* Cleco Power LLC submits the Operational Penalty Annual Compliance Report.
*Filed Date:* 02/24/2011.
*Accession Number:* 20110225–0201.
*Comment Date:* 5 p.m. Eastern Time on Thursday, March 17, 2011.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or

protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 25, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–9416 Filed 4–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RR11–1–000; Docket No. RR11–1–001]**

### Nebraska Public Power District; Southwest Power Pool Regional Entity; Notice of Extension of Time

On April 8, 2011, the Midwest Reliability Organization (MRO) filed a motion for an extension of time to file comments in connection with the March 18, 2011 Petition of Nebraska Public Power District (NPPD Petition) in Docket No RR11–1–000. In its motion, MRO notes that on March 21, 2010 the Commission issued a formal notice of the NPPD Petition establishing a comment deadline of April 18, 2011. MRO also notes that the Southwest Power Pool Regional Entity filed a petition (SPP RE Petition) on March 31, 2010 in Docket No. RR11–1–001 and that the Commission issued a formal notice of the SPP RE Petition establishing a comment deadline on April 21, 2011, which is three days after responses are due to the NPPD Petition. MRO states that the NPPD Petition and the SPP RE Petition stem from a common set of facts, and SPP RE's Petition raises issues that are very similar to those in the NPPD Petition. MRO also states that the current three day difference between the comment deadlines for each petition creates the potential for procedural unfairness and prejudice to MRO, as well as any other prospective participant who may oppose both petitions.

Upon consideration, notice is hereby given that an extension of time for filing motions to intervene and comments concerning the NPPD Petition is granted to and including April 21, 2011.

Dated: April 13, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–9371 Filed 4–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–4962–007]**

### Lasky, Charles D.; Notice of Filing

Take notice that on April 12, 2011, Charles D. Lasky submitted for filing an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) and part 45 of title 18 of the Code of Federal Regulations, 18 CFR 45.9(c).

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on May 3, 2011.

Dated: April 12, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–9373 Filed 4–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** April 21, 2011, 10 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

*** Note —** Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using

the eLibrary link, or may be examined in the Commission's Public Reference Room.

## 969TH—MEETING, REGULAR MEETING

[April 21, 2011, 10 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | | **Administrative** |
| A–1 | AD02–1–000 | Agency Business Matters. |
| A–2 | AD02–7–000 | Customer Matters, Reliability, Security and Market Operations. |
| A–3 | AD06–3–000 | Energy Market Assessment—2010 State of the Markets Report. |
| | | **Electric** |
| E–1 | OMITTED | |
| E–2 | OMITTED | |
| E–3 | OMITTED | |
| E–4 | OMITTED | |
| E–5 | RM10–12–000 | Electricity Market Transparency Provisions of Section 220 of the Federal Power Act. |
| E–6 | RM11–12–000 | Availability of E-Tag Information to Commission Staff. |
| E–7 | RD11–4–000 | North American Electric Reliability Corporation. |
| E–8 | RM09–14–000 | Version One Regional Reliability Standard for Transmission Operations. |
| E–9 | RM09–9–000 | Version One Regional Reliability Standards for Facilities Design, Connections, and Maintenance; Protection and Control; and Voltage and Reactive. |
| E–10 | RM10–8–000 | Electric Reliability Organization Interpretations of Interconnection Reliability Operations and Coordination and Transmission Operations Reliability Standards. |
| E–11 | RM10–29–000 | Electric Reliability Organization Interpretation of Transmission Operations Reliability Standard. |
| E–12 | RD11–2–000 | North American Electric Reliability Corporation. |
| E–13 | OMITTED | |
| E–14 | ER11–2140–000 | PJM Interconnection, L.L.C. |
| | ER11–2140–001 | |
| E–15 | ER10–209–000 | Commonwealth Edison Company. |
| | ER10–209–001 | Commonwealth Edison Company of Indiana, Inc. |
| | ER10–209–002 | |
| | EL10–12–000 | |
| | EL10–12–001 | |
| | EL10–12–002 | |
| | ER11–2931–000 | |
| | ER10–640–000 | Midwest Independent Transmission System Operator, Inc. |
| | ER10–640–001 | |
| E–16 | ER10–355–000 | AEP Appalachian Transmission Company, Inc. |
| | ER10–355–001 | AEP Indiana Michigan Transmission Company, Inc. |
| | | AEP Kentucky Transmission Company, Inc. |
| | | AEP Ohio Transmission Company, Inc. |
| | | AEP Oklahoma Transmission Company, Inc. |
| | | AEP Southwestern Transmission Company, Inc. |
| | | AEP West Virginia Transmission Company, Inc. |
| E–17 | OMITTED | |
| E–18 | EL00–95–255 | San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services. |
| | EL00–98–237 | Investigation of Practices of the California Independent System Operator and the California Power Exchange Corporation. |
| | EL01–10–066 | Puget Sound Energy, Inc. v. Sellers of Energy and/or Capacity. |
| | IN03–10–068 | Investigation of Anomalous Bidding Behavior and Practices in Western Markets. |
| | PA02–2–083 | Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices. |
| | EL03–137–030 | American Electric Power Service Corporation. |
| | EL03–180–059 | Enron Power Marketing, Inc. and Enron Energy Services Inc. |
| | ER03–746–033 | California Independent System Operator Corporation. |
| E–19 | TS10–2–000 | Black Hills Power, Inc. |
| | TS10–1–000 | Cross-Sound Cable Company, LLC. |
| | OA97–93–001 | The Empire District Electric Company. |
| | TS04–178–001 | |
| | OA11–1–000 | Golden Spread Electric Cooperative, Inc. |
| | OA11–2–000 | Golden Spread Panhandle Wind Ranch, LLC. |
| | TS09–7–000 | Muscatine Power & Water. |
| | TS09–10–000 | Northern California Power Agency |
| | OA98–7–001 | |
| | TS04–282–001 | Old Dominion Electric Cooperative. |
| | TS09–8–000 | Otter Tail Power Company. |
| | OA97–139–001 | |
| | TS10–4–000 | City of Roseville, California. |
| | TS09–9–000 | City of Santa Clara, California. |
| | EL99–4–001 | |
| | TS07–3–001 | Southern California Edison Company. |

969TH—MEETING, REGULAR MEETING—Continued

[April 21, 2011, 10 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | OA08–116–001 | Wolverine Power Supply Cooperative, Inc. |
| | TS04–268–000 | Xcel Energy Services, Inc. |
| | TS04–268–001 | |
| E–20 | OMITTED | |
| E–21 | OMITTED | |
| E–22 | OMITTED | |
| E–23 | ER06–356–002 | Midwest Independent Transmission System Operator, Inc. |
| E–24 | ER09–411–006 | Midwest Independent Transmission System Operator, Inc. |
| **Gas** | | |
| G–1 | IN07–26–004 | Brian Hunter. |
| G–2 | RP11–1538–000 | Natural Gas Supply Association, American Forest and Paper Association, American Public Gas Association, Independent Petroleum Association of America, and Process Gas Consumers Group. |
| G–3 | RP11–60–000 | Southern Natural Gas Company. |
| | RP11–60–001 | |
| G–4 | RP10–1410–000 | Kern River Gas Transmission Company. |
| **Hydro** | | |
| H–1 | P–12775–001 | City of Spearfish, South Dakota. |
| H–2 | P–13681–001 | Grand Coulee Project Hydroelectric Authority. |
| H–3 | P–2342–021 | PacifiCorp. |
| **Certificates** | | |
| C–1 | CP11–16–000 | Florida Gas Transmission Company, LLC. |
| C–2 | CP10–82–000 | Northern Natural Gas Company |
| | | Southern Natural Gas Company. |
| | | Florida Gas Transmission Company, LLC. |
| | | Transcontinental Gas Pipe Line Company, LLC. |
| | | Enterprise Field Services, LLC. |
| C–3 | CP11–51–000 | CenterPoint Energy-Mississippi River Transmission Corporation. |

Issued April 14, 2011.

**Kimberly D. Bose,**

*Secretary.*

A free Webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2011–9523 Filed 4–15–11; 11:15 am]

BILLING CODE P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14100–000]**

### Seneca Nation of Indians; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On February 16, 2011, the Seneca Nation of Indians filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers (Corps) Kinzua Dam located on the Allegheny River, near Warren, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The Seneca Nation of Indians proposed project would consist of the following: (1) An array of eight generating units having a total installed capacity of 32,000 kilowatts, (2) a proposed 4,500-foot-long, 230-kilovolt transmission line. The proposed project would have an average annual generation of 123.0 gigawatthours.

*Applicant Contact:* Ms. Wendy Huff, Kinzua Dam Relicensing Commission, Seneca Nation of Indians, P.O. Box 231, 90 Ohi: yo' Way, Salamanca, NY 14779; phone (716) 945–1790.

*FERC Contact:* Timothy Looney; phone: (202) 502–6096.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed

electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14100–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 12, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–9376 Filed 4–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD11–3–009]**

### Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Requesting Questions and Comments on Fiscal Year 2010 Other Federal Agency Cost Submissions

In its *Order On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures,* 109 FERC ¶ 61,040 (2004) (October 8 Order) the Commission set forth an annual process for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. Pursuant to the established process, the Director of the Financial Services Division, Office of the Executive Director, on October 1, 2010, issued a letter requesting the OFAs to submit their costs by January 3, 2011 using the OFA Cost Submission Form.

Upon receipt of the agency submissions, the Commission posted the information in eLibrary, and issued, on March 9, 2011, a notice announcing the date for a technical conference to review the submitted costs. On March 24, 2011, the Commission held the technical conference. Technical conference transcripts, submitted cost forms, and detailed supporting documents are all available for review under Docket No. AD11–3. These documents are accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and are available for review in the Commission's Public Reference Room in Washington, DC.

Interested parties may file specific questions and comments on the FY 2010 OFA cost submissions with the Commission under Docket No. AD11–3–009, no later than April 26, 2011. Once filed, the Commission will forward the questions and comments to the OFAs for response.

Anyone with questions pertaining to the technical conference or this notice should contact W. Doug Foster at (202) 502–6118 (via e-mail at *doug.foster@ferc.gov*), or Fannie Kingsberry at (202) 502–6108 (via e-mail at *fannie.kingsberry@ferc.gov*).

Dated: April 12, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–9372 Filed 4–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2011–0001; FRL–8870–2]**

### SFIREG POM Working Committee; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG), Pesticide Operations and Management (POM) Working Committee will hold a 2-day meeting, beginning on May 16, 2011 and ending May 17, 2011. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

**DATES:** The meeting will be held on Monday, May 16, 2011 from 8:30 a.m. to 5 p.m. and 8:30 a.m. to 12 noon on Tuesday May 17, 2011.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held at The Edgewater Hotel, 2411 Alaskan Way, Pier 67, Seattle, WA. This meeting will be held in the Rainier Room.

**FOR FURTHER INFORMATION CONTACT:** Ron Kendall, Field External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5561; e-mail address: *kendall.ron@epa.gov* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford, DE 19963; telephone number (302) 422–8152; Fax: (302) 422–2435; e-mail address: Grier Stayton at *aapco-sfireg@comcast.net.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are interested in pesticide regulation issues affecting States and any discussion between EPA and SFIREG on FIFRA field implementation issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and those who sell, distribute or use pesticides, as well as any Non Government Organization.

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

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2011–0001. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**II. Tentative Agenda Topics**

1. Implementing and communicating major pesticide regulatory changes—Panel discussion.
2. SFIREG needs for worker safety education.
3. Aluminum phosphide label issues for burrowing rodent control.
4. Revisiting issues with total release disinfectant foggers.
5. Revisiting supplemental label issues and the issue paper.
6. Regulatory issues with supplemental distributor labels.
7. Web-distributed labeling: Review of user acceptance pilot survey results and formulating next steps.
8. Aminopyralid carryover concerns in compost.
9. Distinct labeling project.
10. Distinct labeling project.
11. What's up with drift labeling?
12. Revisions to the FIFRA Inspectors Manual.
13. Data management from state inspections.
14. EPA plans for high yield enforcement actions.
15. Implementation of soil fumigant label changes.

**III. How can I request to participate in this meeting?**

This meeting is open for the public to attend. You may attend the meeting without further notification.

**List of Subjects**

Environmental protection.

Dated: April 12, 2011.

**Robert McNally,**

*Acting Director, Field External Affairs Division, Office of Pesticide Programs.*

[FR Doc. 2011–9449 Filed 4–18–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval, Comments Requested

April 12, 2011.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 4, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Cathy Williams on (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval 30 days after the collection is received at OMB.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

*OMB Control Number:* 3060–1145.

*Title:* Structure and Practices of the Video Relay Service Program, CG Docket No. 10–51.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 28 respondents; 174 responses.

*Estimated Time per Response:* 1 minute (.017 hours) to 75 hours.

*Frequency of Response:* Monthly and one-time reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at Section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the ADA, Public Law 101–336, 104 Stat. 327, 366–69.

*Total Annual Burden:* 378 hours.

*Total Annual Cost:* None.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On April 6, 2011, in document FCC 11–54, the Commission released a *Report and Order* adopting final rules designed to eliminate the waste, fraud and abuse that has plagued the VRS program and had threatened its ability to continue serving Americans who use it and its long-term viability. The Report and Order contains emergency information collection

requirements on request for waiver of the new eligibility requirement for provider. This requirement aims to allow potential providers to apply for waiver of the new requirement so that these providers may continue to provide VRS on an interim basis until the new certification process becomes effective.

Potential VRS providers wishing to receive a temporary waiver shall provide, in writing, a description of the specific requirement(s) for which it is seeking a waiver, along with documentation demonstrating the applicant's plan and ability to come into compliance with all of these requirements (other than the certification requirement) within a specified period of time, which shall not exceed three months from the date on which the rules become effective. Evidence of the applicant's plan and ability to come into compliance with the new rules shall include the applicant's detailed plan for modifying its business structure and operations in order to meet the new requirements, along with submission of the following relevant documentation to support the waiver request:

- A copy of each deed or lease for each call center operated by the applicant;
- A list of individuals or entities that hold at least a 10 percent ownership share in the applicant's business and a description of the applicant's organizational structure, including the names of its executives, officers, partners, and board of directors;
- A list of all of the names of applicant's full-time and part-time employees;
- Proofs of purchase or license agreements for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, automatic call distribution (ACD) routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration;
- Copies of employment agreements for all of the provider's executives and CAs;
- A list of all financing arrangements pertaining to the provision of Internet-based relay service, including documentation on loans for equipment, inventory, property, promissory notes, and liens;
- Copies of all other agreements associated with the provision of Internet-based relay service; and
- A list of all sponsorship arrangements (*e.g.,* those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated agreements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–9407 Filed 4–18–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of March 15, 2011

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 15, 2011.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to execute purchases of longer-term Treasury securities in order to increase the total face value of domestic securities held in the System Open Market Account to approximately $2.6 trillion by the end of June 2011. The Committee also directs the Desk to reinvest principal payments from agency debt and agency mortgage-backed securities in longer-term Treasury securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, April 6, 2011.

**William B. English,**

*Secretary, Federal Open Market Committee.*

[FR Doc. 2011–9364 Filed 4–18–11; 8:45 am]

**BILLING CODE 6210–01–P**

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on March 15, 2011, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

## FEDERAL TRADE COMMISSION

### Department of Justice

### Antitrust Division

### Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program

**AGENCY:** FTC; Antitrust Division, DOJ.

**ACTION:** Notice with comment period.

**SUMMARY:** The FTC and DOJ (the "Agencies") are proposing an enforcement policy regarding the application of the antitrust laws to health care collaborations among otherwise independent providers and provider groups, formed after March 23, 2010, the date on which the Patient Protection and Affordable Care Act was enacted, that seek to participate, or have otherwise been approved to participate, as accountable care organizations (ACOs) under the Medicare Shared Savings Program, Section 3022 of the Affordable Care Act (Patient Protection and Affordable Care Act, Public Law 111–48 (2010) and the Health Care and Education Reconciliation Act of 2010, Public Law 111–52 (2010)).

**DATES:** Public comments must be received on or before May 31, 2011.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gilman, (202) 326–3136 (FTC) or Gail Kursh, (202) 307–5799 (DOJ).

**SUPPLEMENTARY INFORMATION:**

### Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program

### I. Introduction

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively, the "Affordable Care Act") seek to improve the quality and reduce the costs of health care services in the United States by, among other things, encouraging physicians, hospitals, and other health care providers to become accountable for a patient population through integrated health care delivery systems.[1] One delivery system reform is

[1] Patient Protection and Affordable Care Act, Public Law 111–48 (2010); the Health Care and

the Affordable Care Act's Medicare Shared Savings Program (the "Shared Savings Program"), which promotes the formation and operation of Accountable Care Organizations ("ACOs"[2]) to serve Medicare fee-for-service beneficiaries.[3] Under this provision, "groups of providers * * * meeting the criteria specified by the [Department of Health and Human Services] Secretary may work together to manage and coordinate care for Medicare * * * beneficiaries through an [ACO]."[4] An ACO may share in some portion of any savings it creates if the ACO meets certain quality performance standards established by the Secretary of Health and Human Services through the Centers for Medicare and Medicaid Services ("CMS"). The Affordable Care Act requires an ACO that wishes to participate in the Shared Savings Program to enter into an agreement with CMS for not less than three years.[5]

Recent commentary suggests that health care providers are more likely to integrate their care delivery for Medicare beneficiaries through ACOs if they can also use the ACOs for commercially insured patients.[6] This preference to operate in both the Medicare and commercial markets appears to reflect the significant resources and time required to integrate independent provider practices, a desire to provide more patients—not just Medicare patients—with the benefits of integrated health care, and the intent to develop new delivery and payment systems with commercial purchasers of health care services (including health insurance plans and other private payers).

The Federal Trade Commission and the Antitrust Division of the Department of Justice (the "Agencies") recognize that ACOs may generate opportunities for health care providers to innovate in both the Medicare and commercial markets and achieve for many consumers the benefits Congress intended for Medicare beneficiaries through the Shared Savings Program. Therefore, to maximize and foster opportunities for ACO innovation, the Agencies wish both to clarify the antitrust analysis of newly formed collaborations among independent providers that seek to become ACOs in the Shared Savings Program[7] and to coordinate the antitrust analysis with the CMS review of those ACO applications. The Agencies recognize that not all such ACOs are likely to benefit consumers, and under certain conditions ACOs could reduce competition and harm consumers through higher prices or lower quality of care. Thus, the antitrust analysis of ACO applicants to the Shared Savings Program must ensure that ACOs have an opportunity to achieve substantial efficiencies, yet the analysis must remain sufficiently rigorous to protect both Medicare beneficiaries and commercially insured patients from potential anticompetitive harm.

To achieve these goals, the Agencies have developed this Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program (the "Policy Statement"). The Policy Statement is intended to ensure that health care providers have the antitrust clarity and guidance needed to form procompetitive ACOs that participate in both the Medicare and commercial markets. The Policy Statement describes (l) The ACOs to which the Policy Statement will apply;[8] (2) when the Agencies will apply rule of reason treatment to those ACOs; (3) an antitrust safety zone; (4) the Agency review of ACOs exceeding a 50 percent share threshold mandated by CMS under the Shared Savings Program; and (5) options for ACOs to obtain additional antitrust certainty if they are outside the safety zone and below the mandatory review threshold.[9]

## II. Applicability of the Policy Statement

This Policy Statement applies to collaborations among otherwise independent providers and provider groups,[10] formed after March 23, 2010, that seek to participate, or have otherwise been approved to participate, in the Shared Savings Program. For ease of reference, we refer to such collaborations as ACOs, although they may not yet have been approved to participate as ACOs in the Shared Savings Program. We refer to the otherwise independent providers and provider groups that constitute the ACO as ACO participants. This Policy Statement, including its provisions for streamlined analysis, does not apply to mergers. Merger transactions, including transactions that meet the criteria set forth in Section 1.3 of the *Competitor Collaboration Guidelines,*[11] will be evaluated under the Agencies' *Horizontal Merger Guidelines.*[12]

## III. The Agencies Will Apply Rule of Reason Analysis to ACOs That Meet Certain Conditions

The antitrust laws treat naked price-fixing and market-allocation agreements among competitors as per se illegal. Joint price agreements among competing health care providers are evaluated under the rule of reason, however, if the providers are financially or clinically integrated and the agreement is reasonably necessary to accomplish the procompetitive benefits of the integration.

A rule of reason analysis evaluates whether the collaboration is likely to have substantial anticompetitive effects and, if so, whether the collaboration's potential procompetitive efficiencies are likely to outweigh those effects. The greater the likely anticompetitive effects, the greater the likely efficiencies must be to pass muster under the antitrust laws. The Agencies have articulated the standards for both financial and clinical integration in various policy statements, speeches, business reviews, and advisory opinions. For example, the Agencies' *Statements of Antitrust Enforcement Policy in Health Care* (the "Health Care Statements") explain that where participants in physician or multiprovider joint ventures have

Education Reconciliation Act of 2010, Public Law 111–52 (2010).

[2] As used in this document, "ACO" refers to Accountable Care Organizations under the Medicare Shared Savings Program, which also may operate in commercial markets. Patient Protection and Affordable Care Act, Public Law 111–48, section 2706 (2010).

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] Fed. Trade Comm'n & Dep't of Health and Human Serv., Workshop Regarding Accountable Care Organizations, and Implications Regarding Antitrust, Physician Self-Referral, Anti-Kickback, and Civil Monetary Penalty (CMP) Laws (Oct. 5, 2010).

[7] "Newly formed competitor collaborations" are those formed in whole or in part after March 23, 2010, the date on which the Patient Protection and Affordable Care Act was enacted. Patient Protection and Affordable Care Act, Public Law 111–48 (2010).

[8] The analytical principles underlying this Policy Statement would also apply to various ACO initiatives undertaken by the Innovation Center within CMS so long as those ACOs are substantially clinically or financially integrated.

[9] This Policy Statement provides guidance to allow ACOs to determine whether they are likely to present competitive concerns. It does not reflect the full analysis that the Agencies may use in evaluating ACOs or any other transaction or course of conduct.

[10] A "collaboration" comprises a set of agreements, other than merger agreements, among otherwise independent entities jointly to engage in economic activity, and the resulting economic activity. *U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors* § 1.1 (2000), *available at http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf.*

[11] *U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors* § 1.3 (2000), *available at http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf.*

[12] *U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines* (rev. ed. 2010), *available at http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf.*

agreed to share substantial financial risk as defined in the Health Care Statements, their risk-sharing arrangement generally establishes both an overall efficiency goal for the venture and the incentives for the participants to meet that goal. Accordingly, the setting of price is integral to the venture's use of such an arrangement and therefore warrants evaluation under the rule of reason.[13] The Health Care Statements provide examples of financial risk-sharing arrangements that satisfy this standard, but also recognize that other acceptable financial risk-sharing arrangements might develop.[14]

The Health Care Statements further explain that provider joint ventures also may involve clinical integration sufficient to ensure that the venture is likely to produce significant efficiencies.[15] Clinical integration can be evidenced by the joint venture implementing an active and ongoing program to evaluate and modify practice patterns by the venture's provider participants and to create a high degree of interdependence and cooperation among the providers to control costs and ensure quality.[16] Federal Trade Commission staff advisory opinions discuss evidence sufficient to demonstrate clinical integration in specific factual circumstances.[17]

The Affordable Care Act provides that CMS may approve ACOs that meet certain eligibility criteria, including (1) A formal legal structure that allows the ACO to receive and distribute payments for shared savings; (2) a leadership and management structure that includes clinical and administrative processes; (3) processes to promote evidence-based medicine and patient engagement; (4) reporting on quality and cost measures; and (5) coordinated care for beneficiaries.[18] CMS has further defined these eligibility criteria through proposed regulations.[19]

By contrast, the Agencies have not previously listed specific criteria required to establish clinical integration, but instead have responded to detailed proposals from health care providers who have decided how they wish to integrate their health care delivery systems to improve quality and lower costs.[20] The Agencies have wished to avoid dictating prescriptions for how clinical integration should take place. Nonetheless, the Agencies recognize that health care providers seeking to create ACOs in the context of the Shared Savings Program could benefit from greater certainty in evaluating whether an ACO that satisfies the CMS eligibility criteria could be subject to an antitrust investigation and potential challenge as per se illegal.

The Agencies have determined that CMS's proposed eligibility criteria are broadly consistent with the indicia of clinical integration that the Agencies previously set forth in the Health Care Statements and identified in the context of specific proposals for clinical integration from health care providers.[21] The Agencies also have determined that organizations meeting the CMS criteria for approval as an ACO are reasonably likely to be bona fide arrangements intended to improve the quality, and reduce the costs, of providing medical and other health care services through their participants' joint efforts. Further, if a CMS-approved ACO provides the same or essentially the same services in the commercial market, the Agencies have determined that the integration criteria are sufficiently rigorous that joint negotiations with private-sector payers will be treated as subordinate and reasonably related to the ACO's primary purpose of improving health care services.

Further, CMS will collect and evaluate cost, utilization, and quality metrics annually relating to each ACO's performance in the Shared Savings Program over the three-year agreement period. This extensive monitoring of cost, utilization, and quality metrics will help the Agencies determine the extent to which the proposed CMS eligibility criteria in fact lead to cost savings and improved health care quality and may help inform the Agencies' future analysis of ACOs and other provider organizations.

Therefore, the Agencies will provide rule of reason treatment to an ACO if, in the commercial market, the ACO uses the same governance and leadership structure and the same clinical and administrative processes as it uses to qualify for and participate in the Shared Savings Program. This rule of reason treatment will apply to the ACO for the duration of its participation in the Shared Savings Program. The Agencies further note that CMS's proposed regulations allow an ACO to propose alternative ways to establish clinical integration, and the Agencies are willing to consider other proposals for clinical integration as well.

## IV. The Agencies' Antitrust Analysis of ACOs That Meet CMS Eligibility Criteria

As an initial step in determining whether an ACO is likely to raise competitive concerns, the Agencies will use a streamlined analysis that evaluates the ACO's share of services in each ACO participant's Primary Service Area ("PSA").[22] The higher the PSA share, the greater the risk the ACO will be anticompetitive. An ACO with high PSA shares may reduce quality, innovation, and choice for Medicare and commercial patients, in part by reducing the ability of competing equally or more efficient ACOs to form. High PSA shares also may allow the ACO to raise prices to commercial health plans above competitive levels. On the other hand, if there are already other competing ACOs, or sufficient suitable unaffiliated physicians and hospitals to form competing ACOs, it is less likely that the ACO would raise significant competitive concerns.

The following Sections describe how the Agencies will treat ACO applicants that meet CMS eligibility criteria for the Shared Savings Program, based on different ranges of PSA shares.[23] Depending on an ACO's range of PSA shares, CMS may mandate, or an ACO may choose to seek, an expedited antitrust review. An ACO will submit its request for expedited review to both Agencies, and the Agencies will then determine which Agency will be the reviewing Agency and will notify the applicant of such.[24] The Agencies shall

[13] *Dep't of Justice & Fed. Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care (1996)* [hereinafter *Health Care Statements], available at http://www.ftc.gov/reports/hlth3s.pdf.*

[14] *Id.*

[15] *Id.* at 83–87, 110–11.

[16] *See, e.g.,* Christine A. Varney, Assistant Attorney Gen., Antitrust Div., U.S. Dep't of Justice, Antitrust and Healthcare at 12 (May 24, 2010), *available at http://www.justice.gov/atr/public/speeches/258898.pdf.*

[17] See *Fed. Trade Comm'n, Advisory Opinions (1982–2010), available at http://www.ftc.gov/bc/healthcare/industryguide/advisory.htm#2010.*

[18] Patient Protection and Affordable Care Act, Public Law 111–48, section 3022 (2010).

[19] CMS Notice of Proposed Rulemaking, Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations (2011) [hereinafter CMS NPRM on ACOs].

[20] *See generally* FTC Staff Advisory Opinions (2002–Present), *available at http://www.ftc.gov/bc/healthcare/industryguide/opinionguidance.htm.*

[21] *See, e.g.,* Tristate Health Partners, Inc. Advisory Opinion from FTC Staff (April 13, 2009) (evaluating Tristate Health Partners' proposal and stating that, if implemented as proposed, Federal Trade Commission staff would not recommend that the Commission challenge the proposed program), *available at http://www.ftc.gov/os/closings/staff/090413tristateaoletter.pdf.*

[22] While a PSA does not necessarily constitute a relevant antitrust geographic market, it nonetheless provides a useful tool for evaluating potential competitive effects.

[23] We expect ACOs to maintain, for the duration of the agreement period with CMS, the data on which they relied to calculate their PSA shares.

[24] The provisions regarding non-disclosure of competitively sensitive or business confidential

establish a Federal Trade Commission/Department of Justice ACO Working Group to collaborate and discuss issues arising out of the ACO reviews. This process will allow ACOs to rely on the expertise of both Agencies and ensure efficient, cooperative, and expeditious reviews.[25]

*A. The Antitrust Safety Zone for ACOs in the Shared Savings Program*

This Section sets forth an antitrust safety zone for ACOs that meet the CMS eligibility criteria to participate in the Shared Savings Program and are highly unlikely to raise significant competitive concerns. The Agencies will not challenge ACOs that fall within the safety zone, absent extraordinary circumstances. ACOs in the safety zone, therefore, have no obligation to contact the Agencies.

The Agencies emphasize that ACOs outside the safety zone are not presumptively unlawful. Indeed, ACOs outside the safety zone frequently may be procompetitive and lawful. Rather, the creation of a safety zone simply reflects a view that ACOs that fall within it are highly unlikely to raise significant competitive concerns, so no initial competitive review is necessary.

For an ACO to fall within the safety zone, independent ACO participants (*e.g.,* physician group practices) that provide the same service (a "common service") must have a combined share of 30 percent or less of each common service in each participant's PSA, wherever two or more ACO participants provide that service to patients from that PSA.[26] The PSA for each service is defined as "the lowest number of contiguous postal zip codes from which the [ACO participant] draws at least 75 percent of its [patients]" for that service.[27]

Any hospital or ambulatory surgery center ("ASC") participating in an ACO must be non-exclusive to the ACO to fall within the safety zone, regardless of its PSA share. In a non-exclusive ACO, a hospital or ASC is allowed to contract individually or affiliate with other ACOs or commercial payers.[28] The safety zone for physician and other provider services (regardless of whether the physicians or other providers are hospital employees) does not differ based on whether the physicians or other providers are exclusive or non-exclusive to the ACO, unless they fall within the rural exception or dominant provider limitation described below.

The Appendix to this Policy Statement describes how, and identifies the data sources available, to calculate an ACO's shares of services (*i.e.,* physician specialties, major diagnostic categories ("MDCs") for inpatient facilities, and outpatient categories for outpatient facilities)[29] in the relevant PSAs and provides examples.

*Rural Exception:* An ACO may include one physician per specialty from each rural county (as defined by the U.S. Census Bureau) on a non-exclusive basis and qualify for the safety zone, even if the inclusion of these physicians causes the ACO's share of any common service to exceed 30 percent in any ACO participant's PSA for that service.[30] Likewise, an ACO may include Rural Hospitals[31] on a non-exclusive basis and qualify for the safety zone, even if the inclusion of a Rural Hospital causes the ACO's share of any common service to exceed 30 percent in any ACO participant's PSA for that service.

*Dominant Provider Limitation:* This limitation applies to any ACO that includes a participant with a greater than 50 percent share in its PSA of any service that no other ACO participant provides to patients in that PSA. Under these conditions, the ACO participant (a "dominant provider") must be non-exclusive to the ACO to fall within the safety zone.[32] In addition, to fall within the safety zone, an ACO with a dominant provider cannot require a commercial payer to contract exclusively with the ACO or otherwise restrict a commercial payer's ability to contract or deal with other ACOs or provider networks.

The safety zone will remain in effect for the duration of an ACO's agreement with CMS, unless there is a significant change to the ACO's provider composition. An ACO that is not within the rural exception and later exceeds the 30 percent share limitation solely because it attracts more patients will not lose its safety zone status.

*B. Mandatory Antitrust Agency Review of ACOs Exceeding the 50 Percent PSA Share Threshold*

As described in the CMS regulations, an ACO that does not qualify for the rural exception cannot participate in the Shared Savings Program if its share exceeds 50 percent for any common service that two or more independent ACO participants provide to patients in the same PSA, unless, as part of the CMS application process, the ACO provides CMS with a letter from one of the Agencies stating that the reviewing Agency has no present intention to challenge or recommend challenging the ACO under the antitrust laws.[33] This 50 percent share threshold for mandatory review provides a valuable indication of the potential for competitive harm from ACOs with high PSA shares. When conducting a review, however, the Agencies will consider any information or alternative data suggesting that the PSA shares may not reflect the ACO's likely market power, and also will consider any substantial procompetitive justification for why the ACO needs that proposed share to provide high-quality,

information set forth in 28 CFR 50.6 (2010) (U.S. Department of Justice business review letters) and 16 CFR 1.1–1.4 (2010) (Federal Trade Commission advisory opinions) would generally apply to the expedited review process.

[25] For example, it has been standard practice for the Agencies to share with each other their proposed health care business review and staff advisory opinion letters before issuing them in final form to ensure application of consistent standards of antitrust review.

[26] For example, if two physician group practices form an ACO and each includes cardiologists and oncologists, cardiology and oncology would be common services. If, on the other hand, one physician group practice consists only of cardiologists and the other only of oncologists, then there are no common services and the ACO falls within the safety zone regardless of its share, subject to the dominant provider limitation, described below.

[27] Medicare Program: Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase II), 69 FR 16094 (Mar. 26, 2004).

[28] The ACO must be non-exclusive in fact and not just in name. The Health Care Statements explain the indicia of non-exclusivity that the Agencies consider relevant to this evaluation. *Health Care Statements, supra* note 9, at 66–67.

[29] While these services do not necessarily constitute relevant antitrust product markets, they nonetheless provide a useful tool for evaluating potential competitive effects.

[30] The definition and list of rural counties are available at *http://www.census.gov/geo/www/ua/2010urbanruralclass.html.*

[31] For the purposes of this Policy Statement, a Rural Hospital is defined as a Sole Community Hospital or a Critical Access Hospital. A Sole Community Hospital is a hospital that is paid under the Medicare hospital inpatient prospective payment system and is either located more than 35 miles from other like hospitals or is located in a rural area, and meets the criteria for Sole Community Hospital status as specified at 42 CFR 412.92. *See also https://www.cms.gov/MLNProducts/downloads/SoleCommHospfctsht508–09.pdf.* A Critical Access Hospital is a rural community hospital that has been certified as a Medicare Critical Access Hospital, based on the criteria described in 42 CFR part 485 subpart F.

[32] For example, a physician group participating in the ACO may comprise a specialty not found in any other ACO participant. In this case, the ACO may be eligible for the safety zone even if the physician group's share exceeds 50 percent, but only if the physician group participates in the ACO on a non-exclusive basis and the ACO does not restrict a commercial payer's ability to contract or deal with other ACOs or provider groups.

[33] CMS NPRM on ACOs. When the Federal Trade Commission is the reviewing Agency, Commission staff will perform the ACO review pursuant to the Commission's authorization of its staff in 16 CFR 1.1(b). When the Antitrust Division is the reviewing Agency, the Assistant Attorney General in charge of the Antitrust Division or her delegate will sign the letter. 28 CFR 50.6.

cost-effective care to Medicare beneficiaries and patients in the commercial market.

The Agencies are committed to providing an expedited review of ACOs that exceed the 50 percent PSA share threshold. To obtain this expedited review, however, the ACO must submit the following documents and information to the reviewing Agency:[34]

1. The application and all supporting documents that the ACO plans to submit, or has submitted, to CMS or that CMS requires the ACO to retain as part of the Shared Savings Program application process

2. Documents or agreements relating to the ability of the ACO participants to compete with the ACO, either individually or through other ACOs or entities, or to any financial or other incentives to encourage ACO participants to contract with CMS or commercial payers through the proposed ACO

3. Documents discussing the ACO's business strategies or plans to compete in the Medicare and commercial markets and the ACO's likely impact on the prices, cost, or quality of any service provided by the ACO to Medicare beneficiaries, commercial health plans, or other payers

4. Documents showing the formation of any ACO or ACO participant that was formed in whole or in part, or otherwise affiliated with the ACO, after March 23, 2010

5. Information sufficient to show the following:

a. The ACO's PSA share calculations for each common service, as described in the Appendix, and the ACO's PSA share calculations for each common service provided to commercial customers where those shares differ significantly from the PSA share calculations based on Medicare data (*e.g.,* PSA share calculations for pediatricians or obstetricians)

b. Restrictions that prevent ACO participants from obtaining information regarding prices that other ACO participants charge commercial payers that do not contract through the ACO

c. The identity, including points of contact, of the five largest commercial health plans or other payers, actual or projected, for the ACO's services

d. The identity of any other existing or proposed ACO known to operate, or known to plan to operate, in any PSA in which the ACO will provide services

All of the above documents and information must be received by the reviewing Agency at least 90 days before the last day on which CMS has stated that it will accept ACO applications to participate in the Shared Savings Program for the relevant calendar year.[35]

Within 90 days of receiving all of the above documents and information, the reviewing Agency will advise the ACO that the Agency

1. has no present intent to challenge or recommend challenging the ACO, as described in the documents provided and, if appropriate, conditioned on the ACO's written agreement to take specific steps to remedy concerns raised by the Agency; or

2. is likely to challenge or recommend challenging the ACO if it proceeds.

Pursuant to CMS regulations, CMS will not approve for the Shared Savings Program an ACO that has received a letter stating that the reviewing Agency is likely to challenge or recommend challenging the ACO if it proceeds.[36] ACOs that exceed the 50 percent threshold can reduce the likelihood of antitrust concern by avoiding the conduct set forth in Section IV.C (1) through (5) below.

### *C. ACOs Below the 50 Percent Mandatory Review Threshold and Outside the Safety Zone*

ACOs that are outside the safety zone and below the 50 percent mandatory review threshold frequently may be procompetitive. The key issue is whether the ACO, on balance, will provide consumers with high-quality, cost-effective health care or, instead, increase price and reduce consumer choice and value. An ACO in this category that does not impede the functioning of a competitive market and that engages in procompetitive activities will not raise competitive concerns and may proceed without Agency scrutiny. As is current practice, however, if it appears that an ACO's formation or conduct may be anticompetitive, one of the Agencies may investigate the ACO and, if appropriate, take enforcement action at any time during the ACO's participation in the Shared Savings Program.

To provide additional antitrust guidance for ACOs that fall below the mandatory review threshold and outside the safety zone, the Agencies identify five types of conduct that an ACO can avoid to reduce significantly the likelihood of an antitrust investigation. Specifically, the Agencies believe that an ACO in this category is highly unlikely to present competitive concerns if the ACO avoids the conduct set forth in (1) through (5) below. Avoiding the first four types of conduct is important to facilitate payers' ability to offer insurance products that differentiate among providers based on cost and quality. Avoiding the final type of conduct ensures that the ACO does not facilitate collusion involving ACO participants that contract with payers outside the ACO.

1. Preventing or discouraging commercial payers from directing or incentivizing patients to choose certain providers, including providers that do not participate in the ACO, through "anti-steering," "guaranteed inclusion," "product participation," "price parity," or similar contractual clauses or provisions

2. Tying sales (either explicitly or implicitly through pricing policies) of the ACO's services to the commercial payer's purchase of other services from providers outside the ACO (and vice versa), including providers affiliated with an ACO participant (*e.g.,* an ACO may not require a purchaser to contract with all the hospitals in the same network as the hospital that belongs to the ACO)

3. With an exception for primary care physicians, contracting with other ACO physician specialists, hospitals, ASCs, or other providers on an exclusive basis, thus preventing or discouraging them from contracting outside the ACO, either individually or through other ACOs or provider networks

4. Restricting a commercial payer's ability to make available to its health plan enrollees cost, quality, efficiency, and performance information to aid enrollees in evaluating and selecting providers in the health plan, if that information is similar to the cost, quality, efficiency, and performance measures used in the Shared Savings Program

5. Sharing among the ACO's provider participants competitively sensitive pricing or other data that they could use to set prices or other terms for services they provide outside the ACO

[34] The ACO must represent in writing that it has undertaken a good-faith search for the documents and information specified in this Policy Statement and, where applicable, provided all responsive material. Moreover, the Agencies may request additional documents and information where necessary to evaluate the ACO.

[35] For example, if CMS sets November 1, 2011, as the last date for accepting applications to begin participation in the Shared Savings Program on January 1, 2012, then the Agency must receive all of the above documents and information on or before August 3, 2011.

[36] Moreover, if at any time during the ACO's agreement period with CMS there is a significant change to the ACO's provider composition such that the ACO exceeds the 50 percent threshold or is materially different than what was initially reviewed, the ACO must seek antitrust review as set forth above. However, an ACO that exceeds the 50 percent threshold solely because it attracts more patients will not be required to seek antitrust review. CMS NPRM on ACOs.

An ACO that desires further certainty regarding the application of the antitrust laws to its formation and planned operation can seek an expedited review from one of the Agencies, similar to the mandatory review for ACOs above the 50 percent threshold described in Section IV.B above. The reviewing Agency will complete the review within 90 days of receiving all of the necessary documents and information (as described in the mandatory review above and according to the same deadlines) and will inform the ACO of the outcome of the review. The reviewing Agency will advise the ACO of the Agency's intention according to the options described in Section IV.B above. Pursuant to CMS regulations, CMS will not approve for the Shared Savings Program an ACO that has received a letter stating that the reviewing Agency is likely to challenge or recommend challenging the ACO if it proceeds.[37]

## Appendix

This Appendix explains how to calculate the PSA shares of common services discussed in this Policy Statement.[38] There are three steps:

1. Identify each service provided by at least two independent ACO participants (*i.e.,* each common service). A service is defined as follows:

a. For physicians, a service is the physician's primary specialty, as designated on the physician's Medicare Enrollment Application. Each specialty is identified by its Medicare Specialty Code ("MSC"), as defined by CMS.[39]

b. For inpatient facilities (*e.g.,* hospitals), a service is an MDC.[40]

c. For outpatient facilities (*e.g.,* ASCs or hospitals), a service is an outpatient category, as defined by CMS.[41]

2. Identify the PSA for each common service for each participant (*e.g.,* physician group, inpatient facility, or outpatient facility) in the ACO. For each common service and each participant, the PSA is defined as the lowest number of contiguous postal zip codes from which the participant draws at least 75 percent of its patients for that service.[42]

3. Calculate the ACO's PSA share for each common service in each PSA from which at least two ACO participants serve patients for that service. For physician services, the ACO applicant should calculate its shares of Medicare fee-for-service allowed charges (*i.e.,* the amount that a provider is entitled to receive for the service provided) during the most recent calendar year for which data are available. For outpatient services, the ACO applicant should calculate its shares of Medicare fee-for-service payments during the most recent calendar year for which data are available. CMS will make public the data necessary to identify the full range of services and the aggregate fee-for-service allowed charges or payments for each service, by zip code. For inpatient services, the ACO applicant should calculate its shares of inpatient discharges, using state-level all-payer hospital discharge data where available, for the most recent calendar year for which data are available. For ACOs located in a state where all-payer hospital discharge data are not available, the ACO applicant should calculate its shares of Medicare fee-for-service payments during the most recent federal fiscal year for which data are available (CMS will make public the necessary data). For those services that are rarely used by Medicare beneficiaries (*e.g.,* pediatrics, obstetrics, and neonatal care), the ACO may use other available data to determine the relevant shares. For example, for services where Medicare data are not applicable, data on the number of actively participating physicians within the specialty and within the PSA may be a reasonable alternative for the purposes of calculating shares of physician services.

## Example of How To Calculate an ACO's PSA Shares

The following example illustrates how to calculate the ACO's relevant PSA shares. Assume that two independent physician practices, two independent hospitals, and an ASC propose to form an ACO. For purposes of this example, further assume that the hospitals do not directly employ physicians. If they do, then services provided by the hospitals' employed physicians would need to be taken into account in calculating the ACO's shares for each common service.

For the physician groups:

1. Identify the Physician Groups' common MSCs. In this example, Physician Group A ("PG A") has physicians with general surgery (MSC 02) and orthopedic surgery specialties (MSC 20). Physician Group B ("PG B") has physicians with orthopedic surgery (MSC 20) and cardiology (MSC 06) specialties. The common service is orthopedic surgery, not general surgery or cardiology, because PG A does not have cardiologists and PG B does not have general surgeons.

2. Identify the PSAs by zip code for orthopedic surgery for each Physician Group. In this example, there will be two PSAs: One for PG A's orthopedic surgery practice ("PSA A") and one for PG B's orthopedic surgery practice ("PSA B").

3. Determine the ACO's share in each of the relevant PSAs. In this example, both PG A's and PG B's orthopedic surgeons serve patients located in both PSAs. Thus, shares need to be calculated in PSA A and PSA B. The ACO's share of orthopedic surgery in PSA A would be the total Medicare allowed charges for claims billed by the ACO's orthopedic surgeons (which are PG A's and PG B's total allowed charges for claims billed by orthopedic surgeons for Medicare beneficiaries in PSA A's zip codes) divided by the total allowed charges for orthopedic surgery for all Medicare beneficiaries in PSA A. Likewise, the ACO's share of orthopedic surgery services in PSA B would be the total Medicare allowed charges for claims billed by the ACO's orthopedic surgeons (which are PG A's and PG B's total allowed charges for claims billed by orthopedic surgeons for Medicare beneficiaries in PSA B's zip codes) divided by the total allowed charges for orthopedic surgery for all Medicare beneficiaries in PSA B.

For the inpatient services:

1. Identify the hospitals' common MDCs. In this example, Hospital 1 and Hospital 2 each provide services in 10 MDCs, but only two are common services: Cardiac care (*i.e.,* services related to diseases and disorders of the circulatory system—MDC 05) and orthopedic care (*i.e.,* services related to diseases and disorders of the musculoskeletal system and connective tissue—MDC 08).

2. Identify the PSAs by zip codes for cardiac care and orthopedic care for each hospital. In this example, there will be four PSAs: Hospital 1 PSA for cardiac care, Hospital 1 PSA for orthopedic care, Hospital 2 PSA for cardiac care, and Hospital 2 PSA for orthopedic care.

[37] CMS NPRM on ACOs.

[38] Any ACO participant that wants to determine whether it meets the dominant provider limitation of the safety zone should calculate its PSA share in a similar manner.

[39] CMS will make publicly available the most current list of applicable specialties. Specialty Codes 01 (general practice), 08 (family practice), 11 (internal medicine), and 38 (geriatric medicine) are considered "Primary Care" specialties, and are treated as a single service for the purposes of this Policy Statement.

[40] CMS will make publicly available the most current list of MDCs.

[41] CMS will make publicly available a list of applicable outpatient categories as well as data necessary to assign procedure codes to the appropriate category.

[42] This PSA calculation is based on the Stark II regulations. Medicare Program: Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase II), 69 FR 16094 (Mar. 26, 2004).

3. Determine the ACO's share in each of the relevant PSAs. In this example, Hospital l and Hospital 2 both serve cardiac patients located in each hospital's PSA for cardiac care, and both serve orthopedic patients in each hospital's PSA for orthopedic care. Thus, shares need to be calculated in all four PSAs. The ACO's share of cardiac care in Hospital 1's PSA would be the ACO's total number of inpatient discharges for MDC 05 (which are Hospital 1's and Hospital 2's total inpatient discharges for cardiac care in Hospital l's PSA) divided by the total number of inpatient discharges for MDC 05 for all residents of this PSA. Use the same process for the other three PSAs.

For the outpatient services:

1. Identify the hospitals' and ASC's common outpatient categories. In this example, Hospital 1 does not provide outpatient services, while Hospital 2 and the ASC each provide services in 10 outpatient categories, but only two are common services: cardiovascular tests/procedures (outpatient category 2) and musculoskeletal procedures (outpatient category 5).

2. Identify the PSAs by zip codes for cardiovascular tests/procedures and musculoskeletal procedures for each facility. In this example, there will be four PSAs: Hospital 2 PSA for cardiovascular tests/procedures, Hospital 2 PSA for musculoskeletal procedures, ASC PSA for cardiovascular tests/procedures, and ASC PSA for musculoskeletal procedures.

3. Determine the ACO's share in each of the relevant PSAs. In this example, Hospital 2 and ASC both provide cardiovascular tests/procedures to patients located in each facility's PSA for cardiovascular tests/procedures, and both provide musculoskeletal procedures to patients located in each facility's PSA for musculoskeletal procedures. Thus, shares need to be calculated in all four PSAs. The ACO's share of cardiovascular tests/procedures in Hospital 2's PSA would be the ACO's total Medicare fee-for-service payments for outpatient category 2 (which are Hospital 2's and the ASC's total payments for outpatient cardiovascular tests/procedures for Medicare beneficiaries in Hospital 2's PSA) divided by the total payments for outpatient category 2 for all Medicare beneficiaries in this PSA. Use the same process for the other three PSAs.

*Application to the Safety Zone:* In this example, the ACO would calculate ten PSA shares. If all of the shares are 30 percent or below and the hospital inpatient and outpatient services are non-exclusive to the ACO, then the ACO would fall within the safety zone. In other words, the 30 percent threshold must be met in each relevant PSA for each common service. If that condition is not met, then the ACO does not fall within the safety zone.

*Application to the Mandatory Review Threshold:* If only one of the ten PSA shares in this example exceeds 50 percent, the ACO would be required to obtain an antitrust review from one of the Agencies before participating in the Shared Savings Program. In other words, mandatory review is necessary even if the share for only one common service exceeds 50 percent in any PSA in which another ACO participant provides that service.

## V. Request for Comments

The Agencies seek public comment from health care providers, payers, consumers, antitrust practitioners, and other stakeholders on the following:

1. Whether and, if so, why the guidance in the proposed Policy Statement should be changed in any respect;

2. Whether other sources of data exist that ACO applicants could use to determine relevant PSA shares (as identified in Step 3 of the Appendix) for:

(a) Physician services rarely used by Medicare beneficiaries (*e.g.,* pediatrics, obstetrics, and neonatal care); and

(b) Inpatient hospital services located in states where all-payer hospital discharge data are not available.

3. Whether providing the documents and information required to obtain an expedited antitrust review will present an undue burden on ACO applicants—specifically, the Agencies seek comment on:

(a) The necessity of and practical utility for the proposed collection of information;

(b) The accuracy of the estimated time and cost to prepare responses to the requested 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 collecting the information on those who are to respond.

Interested parties are invited to submit written comments electronically or in paper form. Comments should state "Proposed Statement of Antitrust Enforcement Policy Regarding ACOs Participating in the Medicare Shared Savings Program, Matter V100017" both in the text and on the envelope. Please note that your comment, including your name and your state, will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/comments/aco-comments/index.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form and clearly labeled "Confidential."

Because mail delivered to the FTC by the U.S. Postal Service is subject to delay due to heightened security screening, please consider submitting your comments electronically. Comments filed electronically should be submitted by using the following Web link: *https://ftcpublic.commentworks.com/ftc/acoenforcementpolicy* (and following the instructions on the web-based form). To ensure that the Agencies consider an electronic comment, you must file it on the web-based form at the Web link *https://ftcpublic.commentworks.com/ftc/acoenforcementpolicy.* If this Notice appears at *http://www.regulations.gov/#!home,* you may also file an electronic comment through that Web site. The Agencies will consider all comments that regulations.gov forwards to the Commission. You may also visit the FTC Web site at *http://www.ftc.gov/opp/aco/* to read the Notice and the news release describing it.

A comment filed in paper form should reference the "Proposed Statement of Antitrust Enforcement Policy Regarding ACOs Participating in the Medicare Shared Savings Program, Matter V100017" both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex W), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to

delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Agencies will consider all timely and responsive public comments, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/comments/aco-comments/index.shtm.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

**Paperwork Reduction Act**

The Medicare Shared Savings Program is exempt from the Paperwork Reduction Act.[43] Nonetheless, the Agencies are seeking comments relevant to the utility and burden of the submission of documents and information (collectively, "information") required in connection with requests for expedited antitrust review as described above.[44] The Agencies are providing this opportunity for public comment regarding the utility of the information to be provided in support of an ACO request for antitrust review and steps to minimize the burden of collecting and submitting that information. Specific questions regarding these considerations are included in the Request for Comment part of the Supplementary Information section above.

Subject to further refinement by public comment, calculating the projected overall burden of collecting and submitting the required information necessarily entails estimating the number of ACOs that will apply for expedited review, and the average time necessary per applicant to respond. To help inform some of these estimates, the FTC has drawn upon CMS's notice of proposed rulemaking regarding the Medicare Shared Savings Program, published simultaneously with this **Federal Register** notice.[45]

CMS has estimated that some 1.5 to 4 million Medicare beneficiaries will be aligned with a participating ACO during the first three years of the Shared Savings Program.[46] Moreover, the amendments to the Social Security Act that gave rise to the Program specify that, at a minimum, the ACO shall have at least 5,000 such beneficiaries assigned to it in order to be eligible to participate in the Shared Savings Program.[47] Thus, by extrapolation, there may be a range of 300 to 800 ACOs.

Not all of these ACO applicants will be covered by the Policy Statement, however, because the Statement applies only to collaborations among otherwise independent providers and provider groups[48] formed after March 23, 2010, the date of passage of the Patient Protection and Affordable Care Act; it does not apply to such collaborations formed earlier or to ACOs created through merger.[49] Our general understanding is that a number of long-existing institutions will apply to become ACOs, but also that a number of ACO applicants are likely to be newly formed. Accordingly, we estimate that roughly one-half of ACO applicants will be covered, yielding a range of 150 to 400 ACOs likely to be covered by the Policy Statement.

Not all ACO applicants covered by the Policy Statement will need to seek expedited antitrust review, however; only ACO applicants not qualifying for the rural exception and having a share over 50 percent for any common service provided to patients by two or more independent ACO participants in the same PSA must do so. Other ACO applicants that are not required to obtain an antitrust review and do not fall within the Policy Statement's Safety Zone nonetheless may obtain a review if they wish additional antitrust certainty. For the purposes of this burden analysis, we estimate that the number of submissions for expedited antitrust review, both required and voluntary, will range from roughly one-quarter to one-half of all ACO applications covered by the Policy Statement. This yields an estimated range of 38 to 200 ACO applicants that will seek antitrust review. Erring conservatively, the following burden estimate will use the upper bound estimate, *i.e.,* 200 submissions.

In developing an estimate of the time necessary for applying ACOs to collect and review and submit the information for antitrust review, we note that the Policy Statement asks for the application the ACO has submitted or plans to submit to CMS, information that will already have been gathered and organized. Other required information is similar in nature to that required when submitting a pre-merger notification filing under the Hart-Scott-Rodino Act ("HSR");[50] the basic burden estimate for HSR premerger notification filings, OMB Control No. 3084–0005, is 39 hours. Accordingly, we estimate that, in the aggregate, ACOs and their antitrust counsel likely will devote approximately 30 to 50 hours to retrieving, reviewing, and submitting the information. This estimate is conservative, since submitters may submit information about the relevant markets in a format of their choosing. There is no prescribed notification and report form as there is for a submission under the HSR Rules.[51]

**Estimated Labor Costs**

It is not possible to calculate with precision the labor costs associated with providing the required information, because responses will entail participation by management and support staff at various compensation levels within many different entities. Individuals within some or all of those labor categories may be involved in the information-collection process. Nonetheless, the FTC has assumed that executive-level personnel and outside legal counsel will handle most of the

[43] The Patient Protection and Affordable Care Act provides: "Chapter 35 of title 44, United States Code [44 U.S.C. 3501 *et seq.,* the Paperwork Reduction Act] shall not apply to the [Medicare Shared Savings] program." Patient Protection and Affordable Care Act, Public Law 111–48, section 3022 (2010) (codified at 42 U.S.C. 1395jjj(e)).

[44] *Cf.* Paperwork Reduction Act, 44 U.S.C. 3501–3521.

[45] CMS NPRM on ACOs.

[46] *Id.,* preamble to proposed rule.

[47] Section 3022 of the Affordable Care Act amended Title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*) by adding new section 1899 to establish "a shared savings program * * * that promotes accountability for a patient population and coordinates items and services under [Medicare] Parts A and B, and encourages investment in infrastructure and redesigned care processes for high quality and efficient service delivery." Patient Protection and Affordable Care Act, Public Law 111–48, section 3022 (2010) (codified at 42 U.S.C. 1395jjj(a)(1). Section 1899(b)(2)(D) (codified at 42 U.S.C. 1395jjj(b)(2)(D)) specifies the minimum number of beneficiaries per eligible program participant.

[48] A "collaboration" comprises a set of agreements, other than merger agreements, among otherwise independent entities jointly to engage in economic activity, and the resulting economic activity. *U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors* § 1.1 (2000), *available at http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf.*

[49] Merger transactions, including transactions that meet the criteria set forth in Section 1.3 of the *Competitor Collaboration Guidelines,* will be evaluated under the Agencies' *Horizontal Merger Guidelines. See U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors* § 1.3 (2000), *available at http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf; U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines* (rev. ed. 2010), *available at http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf.*

[50] See Section 7A of the Clayton Act, 15 U.S.C. 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390.

[51] See 16 CFR 801–803 (2010).

tasks involved in gathering and producing the responsive information, and has applied an average hourly wage of $460/hour for their labor. Thus, the labor costs per applicant for expedited review should range from approximately $13,800 to $23,000.

**Estimated Annual Capital or Other Non-Labor Costs**

The capital or other non-labor costs associated with the information requests will be minimal. Industry members should already have in place the means to store information of the volume requested. In addition, respondents may have to purchase office supplies such as file folders, computer CDs or DVDs, photocopier toner, or paper in order to comply with the Commission's requests. The FTC estimates that such costs will be minimal.

For the Antitrust Division of the Department of Justice.

**Sharis A. Pozen,**

*Chief of Staff and Deputy Assistant Attorney General.*

For the Federal Trade Commission.

By direction of the Commission, Commissioner Rosch dissenting.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2011–9466 Filed 4–18–11; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARMENT OF HEALTH AND HUMAN SERVICES

### Privacy Act of 1974; Report of a New System of Records

**AGENCY:** Office of Grants and Acquisition Policy and Accountability (OGAPA), Assistant Secretary for Financial Resources (ASFR), Department of Health and Human Services (HHS).

**ACTION:** Notice of New System of Records (SOR).

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, the HHS OGAPA is proposing to establish a new system titled, "HHS Consolidated Acquisition Solution (HCAS), System No. 09–90–0411." As an IT investment, HCAS is monitored by the HHS IT Investment Review Board (ITIRB). In addition to the ITIRB oversight, HCAS is monitored by the HHS/ASFR Office of Grants and Acquisition Policy and Accountability (OGAPA).

At HHS, there were seven different systems in place to support the people who make buying—procurement—possible. The HHS Consolidated Acquisition System (HCAS) is an initiative to reduce the number of duplicative acquisition systems, thereby streamlining and standardizing our procurement processes and systems across the Department. The use of disparate systems complicates all interfaces to financial, inventory, and other systems that HHS has or will employ.

HCAS replaced varying Procurement Request Information System (PRISM) configurations that existed across HHS, and replaced legacy acquisition systems and manual processes necessary for capturing HHS acquisition transactions for integration with the Unified Financial Management System (UFMS). We are also proposing routine uses for this system of records.

**DATES:** *Effective Dates:* The HHS ASFR/OGAPA filed a new system report with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 8, 2011. To ensure that all parties have adequate time in which to comment, the new SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless HHS/ASFR/OGAPA receives comments that require alterations to this notice. Although the Privacy Act requires only that the HHS/ASFR/OGAPA provide an opportunity for interested persons to comment on the proposed routine uses, the HHS/ASFR/OGAPA invites comments on all portions of this notice.

**FOR FURTHER INFORMATION OR COMMENTS CONTACT:** The public should address comments to Kowanna Parran at HHS Office of the Secretary, Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Hubert H. Humphrey Building, 200 Independence Avenue, Washington, DC 20201. Ms. Parran can be reached by telephone at (202) 205–0722 or via e-mail at *kowanna.parran@hhs.gov.* Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern Time zone.

**SUPPLEMENTARY INFORMATION:** The HCAS system itself collects information necessary to support a procurement relationship between HHS and the vendor community. Information is collected on HHS Contracting Officers, and HHS vendors. There are limited instances where an individual's information in identifiable form (IIF) will be collected in order to facilitate a transaction in HCAS. HCAS collects and maintains IIF for service fellows and sole proprietorships that provide vendor services as individuals. Acquisition processes supported by HCAS include acquisition planning, solicitation, contract creation and approval, contract award and award closeout, and contract performance and management. To support these business processes, IIF contained in HCAS may include the following: vendor and contracting officer names, vendor mailing addresses, phone numbers, vendor financial account information, legal documents, Web URLs, e-mail addresses, vendor education records, and vendor tax ID numbers (TIN) or Social Security numbers.

The Privacy Act allows information disclosure without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The Government will only release HCAS information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of HCAS. We are proposing to establish the following routine use disclosures of information maintained in the system:

(1) To agency contractors or consultants who have been engaged by the agency to assist in the accomplishment of the HCAS Operations and Maintenance (O&M) function relating to the purposes for this system and who need to have access to the records in order to assist the OGAPA and HCAS O&M Federal leadership.

We contemplate disclosing information under this routine use only in situations in which OGAPA and HCAS O&M Federal leadership enters into a contractual or similar agreement with a third party to assist in accomplishing a HCAS function relating to purposes for this system.

The HHS Program Support Center (PSC) Financial Enterprise Systems Management (FESM) Operations and Maintenance (O&M) must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting

the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

(2) To the Department of Justice (DOJ), court or adjudicatory body when: the agency or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or the United States Government is a party to litigation or has an interest in such litigation, and by careful review, OGAPA determines that the records are relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever HHS OGAPA is involved in litigation, and occasionally when another party is involved in litigation and OGAPA policies or operations could be affected by the outcome of the litigation, OGAPA would be able to disclose information to the DOJ, court or adjudicatory body involved.

The HHS OGAPA will utilize a combination of administrative, technical, and physical controls to balance privacy and confidentiality with the system's goals. These controls include providing read-only access to HCAS users; authenticating users prior to granting access; controlling access levels and permissions based on user, role, and organizational unit; configuring all servers to remove all unused applications and system files and all local account access except when necessary to manage the system and maintain integrity of data; and physically restricting server access at the Department of Health and Human Services, National Institutes of Health, Center for Information Technology (CIT) Computer Room.

This system will conform to all applicable Federal laws and regulations, and HHS/Office of the Secretary policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the E-Government Act of 2002; the Clinger-Cohen Act of 1996; and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal and HHS/Office of the Secretary policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications and the HHS–OCIO Policy for Information Systems Security and Privacy (IS2P) Handbook.

The OGAPA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

The OGAPA will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in this system. HCAS will collect only that information necessary to perform the system's functions. In addition, the OGAPA will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. The OGAPA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: April 7, 2011.

**Nancy J. Gunderson,**

*Deputy Assistant Secretary, Office of Grants and Acquisition Policy and Accountability, HHS/ASFR.*

## SYSTEM NO: 09–90–0411

### SYSTEM NAME:

"HHS Consolidated Acquisition Solution (HCAS)," HHS/ASFR.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

NIH Center for Information Technology, 10401 Fernwood Road, Bethesda, MD 20817.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information is collected on HHS Contracting Officers and HHS vendors who are service fellows or sole proprietorships that provide vendor services as individuals.

### CATEGORIES OF RECORDS IN THE SYSTEM:

HCAS records include HHS statements of work, purchase requests, requests for proposals (RFPs), bids, proposals, vendor invoices, requisitions, contract awards, contract modifications, progress reports, financial status reports, audit reports, and contract deliverables.

Individual Information in Identifiable Form (IIF) contained in these records includes names of HHS contracting officers, vendor names, mailing addresses, phone numbers, financial account information, legal documents, Web URLs, and e-mail addresses and may include Social Security numbers when a vendor Tax Information Number (TIN) is not available.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

As an IT investment, HCAS is governed by the HHS IT Investment Review Board (ITIRB), as part of the HHS Capital Planning and Investment Control (CPIC) process, as managed by the HHS Office of the Chief Information Officer (OCIO). CPIC is mandated by the Clinger-Cohen Act which requires agencies to use a disciplined process to acquire, use, maintain and dispose of information technology. The OCIO exercises authorities delegated by the Secretary to the Deputy Assistant Secretary for Information Technology, as the CIO for HHS. These authorities derive from the Clinger-Cohen Act of 1996, the Paperwork Reduction Act of 1995, the Computer Matching and Privacy Act of 1988, the Computer Security Act of 1987, the Federal Information Security Management Act (FISMA), the National Archives and Records Administration Act of 1984, the Competition in Contracting Act of 1984, the Federal Records Act of 1950, OMB Circulars A–130 and A–11, Government Printing and Binding Regulations issued by the Joint Committee on Printing, and Presidential Decision Directive 63.

In addition to the ITIRB oversight, HCAS falls within the governance of the HHS Office of Grants and Acquisition Policy and Accountability (OGAPA).

### PURPOSE(S):

HHS has acquisition offices across 10 Operating/Staff Divisions, which conduct and process thousands of procurement transactions annually. The HHS acquisition community requires a transaction-based, integrated procurement system that is consistent across the entire HHS. Except for the Centers for Disease Control and Prevention (CDC), HHS utilizes the acquisition processing and management functionality of Purchase Request Information System (PRISM), a commercial off-the-shelf (COTS) application from Compusearch Software Systems. Except for CDC and Centers for Medicare and Medicaid Services (CMS), HHS utilizes the requisitioning functionality in Oracle i-Procurement, a package available within Oracle Federal Financials, the software utilized by the Unified Financial Management System

(UFMS), the HHS enterprise financial management system.

The HHS Consolidated Acquisition System delivers a standardized global PRISM for all operational contracting components within HHS (except CDC) that utilize UFMS (referred to as HCAS clients). HHS deployed HCAS to the following seven HCAS client contracting offices: Agency for Healthcare Research and Quality (AHRQ), Assistant Secretary for Preparedness and Response (ASPR), Food and Drug Administration (FDA), Program Support Center (PSC), Health Resources and Services Administration (HRSA), Indian Health Service (IHS) and Substance Abuse and Mental Health Services Administration (SAMHSA). (CMS and National Institutes of Health (NIH), which use other distinct Oracle Federal Financial instances for financial management that are not UFMS, are not considered HCAS clients and are outside the scope of this system.) CDC, while using UFMS, does not use the HCAS PRISM environment but uses their own procurement system Integrated Contracts Expert (ICE). HCAS PRISM was fully implemented across its HHS clients on February 8, 2009.

The enterprise PRISM configuration via HCAS allows HHS to standardize acquisition business processes across the department. A consolidated PRISM facilitates and enables a single solution for integrating acquisition with financial management (one interface between HCAS and UFMS) and other mixed financial management systems.

The HCAS system itself collects information necessary to support a procurement relationship between HHS and the vendor community. There are limited instances where an individual's information in identifiable form (IIF) will be collected in order to facilitate a transaction in HCAS. HCAS collects and maintains IIF for service fellows and sole proprietorships that provide vendor services as individuals.

Acquisition processes supported by HCAS include acquisition planning, solicitation, contract creation and approval, contract award and award closeout. To support these business processes, IIF contained in HCAS may include the following: Vendor and contracting officer names, vendor mailing addresses, phone numbers, vendor financial account information, legal documents, Web URLs, e-mail addresses, vendor education records, and vendor tax ID numbers (TIN) or Social Security numbers. HCAS users will be able to retrieve data records by vendor or contracting officer name, among other identifiers. For example, names of contracting officer who act as buyers for HHS may be used to retrieve request for proposals or other HHS solicitation materials or purchase requests. Users may also use a contracting officer's name to retrieve associated contact information such as business e-mail or phone number when creating a solicitation or contract. Similarly, users may retrieve solicitation and contract materials, such as proposals, progress reports, and contract modifications by vendor name.

Social Security numbers of vendors may be captured within HCAS under certain circumstances where a Tax Identification Number (TIN) is not available. The HCAS system will comply with all provisions of section 7 of the Privacy Act, including compliance with the following paragraph:

Any Federal, State or local government agency which requests an individual to disclose his Social Security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

When vendor SSN information is collected by HCAS, it is required for vendors to obtain the benefit of contracting with HHS. Provision of this information by the vendor is elective and again, is only used when a vendor TIN is not available.

HCAS is integrated with UFMS and information is exchanged in both directions between the two systems. Information retrieved from HCAS may be shared/disclosed within and across the HHS contracting and financial management communities to: (1) Specify the Contracting Officer conducting an HHS solicitation or purchase request; (2) to specify vendor information in contract documentation, including award, modifications, and task progress reports; and (3) to validate and approve payments to HHS vendors. Information on vendors pertaining to specific HHS contract transactions captured in HCAS is not shared or disclosed to agencies outside of HHS. Names of contracting officers who act as buyers for HHS are contained in solicitation materials that are released to the public for competitive procurements.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Privacy Act allows information disclosure without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

(1) To agency contractors or consultants who have been engaged by the agency to assist in the accomplishment of the HCAS/FESM Operations and Maintenance function (O&M) relating to the purposes for this system and who need to have access to the records in order to assist the OGAPA and HCAS/FESM O&M Federal leadership.

(2) To the Department of Justice (DOJ), court or adjudicatory body when the agency or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the HHS OGAPA determines that the records are relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

All records are stored on electronic media.

**RETRIEVABILITY:**

Identifiers used to retrieve records may include names of contracting officers and vendors. Names of contracting officers who act as buyers for HHS may be used to retrieve RFPs, statements of work, purchase requests, contract awards or contract modifications. Vendor names may be used to retrieve proposals, contract awards, contract modifications, progress reports, financial status reports, invoices, and contract deliverables. In the limited instance that a vendor is a service fellow or a sole proprietorship that provides services to HHS as an individual, HCAS will allow users to use the individual's name to retrieve vendor related procurement records.

**SAFEGUARDS:**

**ADMINISTRATIVE CONTROLS:**

The following Administrative Controls have been in place for HCAS:

**ACCOUNT MANAGEMENT/USER IDENTIFICATION AND AUTHENTICATION:**

Users must have a UFMS account prior to creation of the PRISM account. User's supervisor or another UFMS user submits a request for access on behalf of the prospective user through the User Provisioning Automated (UPA) process. The UPA process is the on-line UFMS user provisioning module. The UPA process is a workflow process that requires supervisor approval, responsibility approval, SOD approval, and security verification of background investigation. Reports can be generated detailing the approvals for user provisioning. Inactive accounts are locked after 60 days of inactivity. The use of temporary and emergency accounts is prohibited.

**AUTHENTICATOR MANAGEMENT:**

Users are required to change their password upon initial login. If users do not log in and change their passwords within 30 days of account generation, then the account is made inactive. Users are responsible for understanding and complying with all password use requirements including the need for adequate (difficult to decipher) passwords. Users are required to use passwords of a mix of eight (8) alpha, numeric and special characters, with at least one uppercase letter, one lower case letter, and one number. Users are automatically required to change their passwords every 90 days. Users are instructed to keep their passwords confidential and not share them with anyone. Upon notification that a password has been forgotten or compromised, the password is immediately reset to a unique (non-default) password and the user is notified. Upon login, after a password reset, the user is required to change their password within 2 days to prevent the account from being deactivated.

**ACCESS ENFORCEMENT:**

User access to the application functions are granted through the UPA process based upon the role that has been assigned to the user and approved through the workflow. Privileges assigned to users of the system/application are granted based upon the role that has been assigned to the user. This includes administrative privileges that can be performed within the system.

**INFORMATION FLOW ENFORCEMENT—NIH/CIT SECURITY MECHANISMS:**

*Carbon Copy (CC):* The UFMS application resides on hardware located within the National Institutes of Health, Center for Information Technology (NIH/CIT) general support system (GSS). The flow of information within the system and between interconnected systems is controlled by various NIH/CIT network firewalls, and authentication mechanisms HHS–Net Certification and Accreditation (C&A)—The flow of information within the system traverses the HHS–Net network which includes routers, switches, network firewalls, and authentication mechanisms.

**LEAST PRIVILEGE:**

Privileges assigned to users of the system/application are granted based upon the role that has been assigned to the user.

**UNSUCCESSFUL LOGIN ATTEMPTS:**

The system contains functionality that prevents user access when the maximum number of unsuccessful login attempts is exceeded.

The HCAS system automatically locks an account until released by an administrator when three (3) unsuccessful login attempts occur.

**TECHNICAL CONTROLS:**

Access to the system is controlled by HCAS Systems Security Officer, which authenticates the user prior to granting access. Access level and permissions are controlled by the system and based on user, role, organizational unit, and status of the report. All servers have been configured to remove all unused applications and system files and all local account access except when necessary to manage the system and maintain integrity of data.

**PHYSICAL CONTROLS:**

The servers will reside in the NIH CIT Computer Room where policies and procedures are in place to restrict access to the machines.

This system will conform to all applicable Federal laws and regulations and HHS/Office of the Secretary policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the E-Government Act of 2002; the Clinger-Cohen Act of 1996; and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal and HHS/Office of the Secretary policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications and the HHS Information Systems Program Handbook.

**RETENTION AND DISPOSAL:**

HCAS is governed by the HHS Records Management and Disposition guidelines for the retention and destruction of IIF. The guidelines reference the National Archive and Records Administration Act of 1984 (Pub. L. 98–497, 44 U.S.C. Chapter 21). The HCAS FESM/O&M will retain identifiable information maintained in the HCAS system of records in accordance with the National Archives and Records Administration General Records Schedules and Federal Acquisition Regulation (FAR 4.805).

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Information and Systems Management Services (ISMS), U.S. Department of Health and Human Services, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURE:**

Inquiries should be made in writing to the System Owner, Deputy Assistant Secretary, Office of Grants and Acquisition Policy and Accountability, Assistant Secretary for Financial Resources, U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201. The individual making the inquiry must show proof of identity before information is released and give name and social security number, purpose of inquiry, and if possible, the document number.

**RECORD ACCESS PROCEDURES:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

**CONTESTING RECORD PROCEDURES:**

The subject individual should contact the system owner named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulations 45 CFR 5b.7).

**RECORD SOURCE CATEGORIES:**

Information in HCAS will be collected, in part, from the data transmitted from i-Procurement which includes: Requisition number; date of

request; object class, appropriation code and Central Accounting Number (CAN) of the item requested; HHS requesting organization name; and location, HHS point of contact name and business contact phone number within the requesting organization; a description of the item requested and corresponding quantity and cost required. Other information collected includes; proposal, solicitation, market research, and contract award documentation.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 2011–9467 Filed 4–18–11; 8:45 am]

**BILLING CODE 4150–24–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Intent To Award Affordable Care Act Funding to Approved Applications Formerly Received in Response to the Centers for Disease Control and Prevention Funding Opportunity IP11–010, "Enhanced Surveillance for New Vaccine Preventable Disease"

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice provides public announcement of CDC's intent to fund Approved cooperative agreement applications previously received and competed in response to CDC Funding Opportunity, CDC–RFA–IP11–010, "*Enhanced Surveillance for New Vaccine Preventable Disease.*" It is the intent of CDC to fund the applications with Patient Protection Affordable Care Act (ACA), Section 4002, appropriations.

CFDA Number 93.533 is the ACA-specific CFDA number for this initiative.

### Award Information

*Approximate Current Fiscal Year Funding:* $2,750,000.

*Approximate Number of Awards:* 3–5.

*Approximate Average Award:* $500,000.

*Fiscal Year Funds:* Patient Protection and Affordable Health Care Act of 2011.

*Anticipated Award Date:* 31 May 2011.

*Budget Period:* 12 months.

*Project Period:* 5 years.

*Application Selection Process:* CDC will apply the same selection methodology published in the FOA, CDC–RFA–IP11–010.

The following will be considered in making funding decisions:

- Scientific and technical merit of the proposed project as determined by scientific peer review.
- Availability of funds.
- Relevance of the proposed project to program priorities.
- Funding decision criteria will include a priority score, programmatic importance/value relative to program priorities, past and current surveillance performance and capabilities, research portfolio, geographic locations, and study population consideration (ethnicity, etc.)
- Preference may be given to a medical institution catchment area having a total population of greater than 500,000 persons.
- Applicants must have a letter of support with a research laboratory for rotavirus analyses or they will not be funded.

CDC will add the following Authority to that which is reflected in the published Funding Opportunity:

—Section 4002 of the Patient Protection and Affordable Care Act (Public Law 111–148.)

**DATES:** The effective date for this action is April 19, 2011 and remains in effect until the expiration of the project period of the ACA funded applications..

**FOR FURTHER INFORMATION CONTACT:** Elmira Benson, Deputy Director, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2802, e-mail *Elmira.Benson@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (ACA). ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to "provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs. ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Services Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

ACA legislation affords an important opportunity to advance public health across the lifespan and to reduce health disparities by supporting an intensive community approach to chronic disease prevention and control.

Therefore, the FOA program activities CDC proposes to fund with ACA appropriations are authorized by the amendment to the Public Health Services Act which authorized the Prevention and Wellness Program.

Dated: April 8, 2011.

**John Murphy,**

*Business Operation Manager, Centers for Disease Control and Prevention.*

[FR Doc. 2011–9417 Filed 4–18–11; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60-Day–11–11EF]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Dynamic Decision Making in Mine Emergency Situations—Existing Collection in use without an OMB control number—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Mining is a context filled with tragic outcomes, as thousands of miners die in mining accidents each year throughout the world. In the process of examining workers' responses in emergency situations in mines, researchers at the NIOSH-Pittsburgh Research Laboratory (PRL) have found that one of the key human behavior processes that need to be better understood to better handle emergency situations is Decision Making (Vaught, Brnich, & Mallett, 2004). Decision Making, the process by which alternatives are constructed and a choice is made, continues to be one of the critically understudied aspects of mine emergencies. For example, The Mine Safety Technology and Training (MSTT) Commission suggests that escape/rescue decision-making is one of the most critical skill/knowledge gaps identified in mining (MSTTC, 2006). Their report strongly supports the need for additional training in decision-making during emergency situations to improve the ability of miners to escape (or be rescued).

The research proposed here will help address this gap by integrating the theoretical knowledge of human decision making in dynamic situations with the practical aspects of training miners. The research will result in the improved science of decision making and practical guidelines and tools that demonstrate how to best train decision making in the unique conditions of accidents when under workload, uncertainty, and time constraints.

A simple Decision Making Game (DMGame) will be used in a laboratory study to investigate choice strategies based on the dynamic development of cues. Through a contract with the Centers for Disease Control and Prevention (Contract #200–2009–31403), the Dynamic Decision Making Laboratory at Carnegie Mellon University will investigate several independent variables relevant to Instance-Based Learning Theory, including: The diversity of instances, the number of instances (base rates) needed to improve accuracy in the triage process, and the effects of time constraints and workload on the effectiveness of triage. The manipulation of these independent variables will reveal training scenarios and conditions that are more effective during learning and at transfer. Knowledge acquired during training will be tested in transfer conditions. The transfer conditions will vary depending on the participants used in the experiment. New guidelines for training for unexpected situations will be developed from the results of the laboratory experiment. The results and guidelines will be published in journal research papers and presented in international conferences and meeting.

The Dynamic Decision Making Laboratory conducted this research with a total of 28 students from Carnegie Mellon University and the University of Pittsburgh between January 2010 and December 2010. Participants were recruited through an online research participant pool from Carnegie Mellon University and the University of Pittsburgh to participate in a simple DMGame, called the "Work Hazard Game." Participants were asked to read and sign a consent form. After signing the form, participants were provided with instructions on how to play the game. They then completed the Work Hazard Game. Overall, participation lasted about 30 minutes. The game recorded participants' actions and the data was transferred to statistical software (i.e., SPSS) for analysis. Participants were not asked to identify which school they were affiliated with. There were no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents/form name | Number of respondents | Number of responses per respondent | Average burden response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Student | 28 | 1 | 30/60 | 14 |
| Total | | | | 14 |

**Daniel Holcomb,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–9419 Filed 4–18–11; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket No. CDC–2011–0002]**

### Draft Action Plan—A Public Health Action Plan To Combat Antimicrobial Resistance

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Extension of public comment period.

**SUMMARY:** On March 16, 2011, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) published a notice in the **Federal Register** requesting public comment on the draft, *A Public Health Action Plan to Combat Antimicrobial Resistance* (76 FR 14402). Written and electronic comments were to be received on or before April 15, 2011. CDC/HHS received requests asking for a 60-day extension of the comment period. In consideration of those requests, HHS/CDC is extending the comment period by 60 days to June 14, 2011.

**DATES:** Written or electronic comments must be received on or before June 14,

2011. Please refer to **SUPPLEMENTARY INFORMATION** for additional information.

**ADDRESSES:** Written comments may be submitted to the following address: Centers for Disease Control and Prevention, National Center for Emerging and Zoonotic Infectious Diseases, Division of Healthcare Quality Promotion, Office of Antimicrobial Resistance, Attn: Antimicrobial Resistance Action Plan, Docket No. CDC–2011–0002, 1600 Clifton Rd., NE., Mailstop A–07, Atlanta, Georgia 30333.

You may also submit written comments electronically to: *http://www.regulations.gov.* All comments received will be posted publicly without change, including any personal or proprietary information provided. To download an electronic version of the plan, access *http://www.regulations.gov*.

Written comments, identified by Docket No. CDC–2011–0002 will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Daylight Time, at 1600 Clifton Road, NE., Atlanta, Georgia 30333. Please call ahead to (404) 639–4000 and ask for a representative from the Office of Antimicrobial Resistance to schedule your visit. Comments may also be viewed at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rachel Wolf, Centers for Disease Control and Prevention, National Center for Emerging and Zoonotic Infectious Diseases, Division of Healthcare Quality Promotion, Office of Antimicrobial Resistance; 1600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333. (404) 639–4000.

**SUPPLEMENTARY INFORMATION:** The HHS Interagency Task Force on Antimicrobial Resistance (hereafter referred to as the Task Force) was created in 1999 to coordinate the activities of Federal agencies in addressing antimicrobial resistance (AR) in recognition of the increasing importance of AR as a public health threat. The Task Force is co-chaired by the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH). The Task Force also includes the Agency for Healthcare Research and Quality (AHRQ), the Centers for Medicare and Medicaid Services (CMS), the Health Resources and Services Administration (HRSA), the HHS Office of the Assistant Secretary for Preparedness and Response (HHS/ASPR), the Department of Agriculture (USDA), the Department of Defense (DoD), the Department of Veterans Affairs (VA), and the Environmental Protection Agency (EPA).

In 2001, the Task Force developed an initial Action Plan, outlining specific issues, goals, and actions important for addressing the problem of AR. This document, entitled, *A Public Health Action Plan to Combat Antimicrobial Resistance, Part I: Domestic Issues,* reflected a broad-based consensus of participating Federal agencies, which was reached with individual input from state and local health agencies, universities, professional societies, pharmaceutical companies, healthcare delivery organizations, agricultural producers, consumer groups, and other members of the public. Continued collaboration with these partners has been vital to achieving successful implementation of the Action Plan.

This draft document, *A Public Health Action Plan to Combat Antimicrobial Resistance,* is a revision of the 2001 interagency action plan. The revised Action Plan provides an updated blueprint for specific, coordinated Federal action to address emerging threats in AR. The document covers a broad spectrum of AR issues, addressing resistance in a wide range of pathogens (bacteria, viruses, fungi, and parasites) and settings (human medicine, veterinary medicine, agriculture, animal production, and others).

The Action Plan includes action items organized into four focus areas: Surveillance, Prevention and Control, Research, and Product Development. The Action Plan contains specific action items, projects, and implementation steps. Wherever possible, action items are populated with specific projects or implementation steps to provide greater specificity for planned Federal activities. The action items, projects, and implementation steps do not represent an exhaustive list of activities.

HHS/CDC has posted the original notice and all related materials on *http://www.regulations.gov.*

Dated: April 13, 2011.

**John Murphy,**

*Business Operation Manager, Centers for Disease Control and Prevention.*

[FR Doc. 2011–9418 Filed 4–18–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) (last amended at 75 FR 14176–14178, dated March 24, 2010), is amended to reflect the abolishment of the Office of External Affairs and Beneficiary Services and the establishment of the Office of Public Engagement and the Office of Communications.

The specific amendments to part F are described below:

(1) Under Part F, CMS, Office of the Administrator, FC. 10 Organizations, delete the Office of External Affairs and Beneficiary Services (FCB) and insert the following Office of Public Engagement (FCS) and the Office of Communications (FCT) after the Chief Operating Officer.

(2) Under Part F, CMS, FC. 20 Functions, delete the description of the Office of External Affairs and Beneficiary Services (FCB) and insert the following descriptions of the Office of Public Engagement (FCS) and the Office of Communications (FCT):

**Office of Public Engagement (FCS)**

- Serves as CMS' focal point for outreach to beneficiaries and partners, provides leadership for CMS in the areas of Medicare Ombudsman activities, partnerships with providers and stakeholders, and tribal affairs. Advises the Administrator and other CMS components in all activities related to these functions and on matters that affect other units and levels of government.
- Formulates and implements a customer service plan that serves as a roadmap for the effective treatment and advocacy of customers and the quality of information provided to them.
- Coordinates a State and local program of counseling assistance for people with Medicare and their families through the administration of grants to State Health Insurance Assistance Program (SHIP), implementation of continuous quality improvement activities, ongoing performance measurement, and regular communication with SHIP grantees.
- Contributes to the formulation of policies, programs, and systems as well

as oversees beneficiary services and tribal affairs, including CMS' Ombudsman program, partner and provider relations, and program training. Coordinates with the Office of Legislation on the development and advancement of new legislative initiatives and improvements.

• Oversees all CMS interactions and collaboration with stakeholders relating to beneficiary services including but not limited to external advocacy groups, Medicare beneficiary customer service, Native American and Alaskan Native tribes, HHS, the White House, other CMS components, and other Federal government entities.

• Liaison between CMS and AI/AN communities including tribal leaders, health providers, beneficiaries and other Federal Agencies in regards to AI/AN health and CMS programs.

• Oversees all CMS interactions and collaborations with key stakeholders (external advocacy groups, contractors, local and State governments, HHS, the White House, other CMS components, and other Federal entities) related to the Medicare and Medicaid and other Agency programs.

• Coordinates stakeholder relations, community outreach, and public engagement with the CMS Regional Offices.

• Directs and administers CMS' programs for emergency preparedness and continuity of operations. Provides direction for all essential on-site services for Central Office and consultation and direction to Consortia/Regional Offices with respect to these programs.

**Office of Communications (FCT)**

• Serves as CMS' focal point for strategic and tactical communications—internal and external—providing leadership for CMS in the areas of traditional and new media, including Web initiatives such as social media supported by innovative, increasingly mobile technologies; media relations; public information campaigns; and speechwriting.

• Serves as CMS' focal point in all activities related to the media. Provides consultation, advice, and training to CMS' senior staff with respect to relations with the news media.

• Coordinates with external partners including the Department of Health and Human Services (HHS) and the White House on key communication and public engagement initiatives, leveraging CMS resources to strategically support these activities.

• Contributes to the formulation of policies, programs, and systems as related to strategic and tactical communications.

• Coordinates with the Office of Legislation on the development and advancement of new legislative initiatives and improvements.

• Oversees communications research, design and development, evaluation and continuous improvement activities to improving internal and external communication tools, including but not limited to brochures, public information campaigns, handbooks, Web sites, reports, presentations/briefings.

• Identifies communication best practices for the benefit of CMS beneficiaries (i.e., of the Medicare and Medicaid programs) and other CMS customers.

• Contributes to the formulation of policies, programs, and systems as well as oversees beneficiary services provided by the beneficiary call centers. Serves as CMS' focal point for telephone services to beneficiaries, and provides leadership for CMS in the area of call center operations.

(Authority: 44 U.S.C. 3101)

Dated: March 27, 2011.

**Marilyn Tavenner,**

*Principal Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.*

[FR Doc. 2011–9439 Filed 4–18–11; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Computerized Support Enforcement Systems.

*OMB No.:* 0980–0271.

*Description:* The information being collected is mandated by Section 454(16) of the Social Security Act which provides for the establishment and operation by the State agency, in accordance with an initial and annually updated advance automated data processing planning document (APD) approved under section 452(d) of the title, of a statewide automated data processing and information retrieval system. The system must meet the requirements of section 454A.

In addition, Section 454A(e)(1) requires that States create a State Case Registry (SCR) within their statewide automated child support systems, to include information on IV–D cases and non-IV–D orders established or modified in the State on or after October 1, 1998. Section 454A(e)(5) requires States to regularly update their cases in the SCR. The data being collected for the APD are a combination of narrative, budgets and schedules which are used to provide funding approvals on an annual basis and to monitor and oversee system development. Child support has separated regulations under 45 CFR 307.15 related to submittal of APDs supplemental authority for enhanced funding system development and substantial penalties for non-compliance with the statutory deadline of October 1, 2000. The information collection requirements for the development and maintenance of child support enforcement automated systems are addressed in 45 CFR Part 95 and the information collection.

*Respondents:* Courts and State Child Support Agencies

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| 307.15(b)(1)(IV&V) ongoing | 1 | 4 | 10 | 40 |
| 307.5(b)(1)(IV&V) semi-annual | 7 | 25 | 16 | 224 |
| Collection of non-IV–D data for SCR: Courts | 3,045 | 412 | 0.03 | 37,636.20 |
| States: Transmission to the FCR | 54 | 200,000 | 0.29 | 3,132,000 |
| Collection of Child Data for IV–D cases for SCR: Courts | 3,045 | 196 | 0.03 | 17,904.60 |

Estimated Total Annual Burden Hours: 3,187,804.80.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2011–9423 Filed 4–18–11; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Title:* University Centers for Excellence in Developmental Disabilities Education, Research, and Service—Annual Report.

*OMB No.:* 0970–0289.

*Description:* Section 104 (42 U.S.C. 15004) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act of 2000) directs the Secretary of Health and Human Services to develop and implement a system of program accountability to monitor the grantees funded under the DD Act of 2000. The program accountability system shall include the National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDDs) authorized under Part D of the DD Act of 2000. In addition tothe accountability system, Section 154(e) (42 U.S.C. 15064) of the DD Act of 2000 includes requirements for a UCEDD Annual Report.

*Respondents:* University Centers.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| UCEDD Annual Report Template | 67 | 1 | 500 | 33,500 |

*Estimated Total Annual Burden Hours:* 33,500.

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 Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@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.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2011–9393 Filed 4–18–11; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0407]**

### Ivyl W. Wells: Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Ivyl W. Wells, MD from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Wells was convicted of multiple felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. Dr. Wells was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Wells failed to respond. Dr. Well's failure to respond constitutes a waiver of his right to a hearing concerning this action.

**DATES:** This order is effective April 19, 2011.

**ADDRESSES:** Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–4640.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the FD&C Act.

On July 12, 2006, Dr. Wells pleaded guilty to, among other things, mail fraud

in violation of 18 U.S.C. 1341 and 1346, adulterating a drug while held for sale, in violation of 21 U.S.C. 331(k) and 333(a)(2), and misbranding a drug while held for sale, in violation of 21 U.S.C. 331(k) and 333(a)(2). On December 11, 2006, the U.S. District Court for the District of Idaho entered judgment against him.

FDA's finding that debarment is appropriate is based on the felony convictions referenced herein for conduct relating to the regulation of a drug product. The factual basis for those convictions is as follows: Dr. Wells was a physician licensed by the Idaho State Board of Medicine and he owned and operated the Skinovative Laser Center. Between late 2003 and early 2004, Dr. Wells attended training sponsored by TRI-toxin International (TRI), an Arizona corporation. During the TRI seminar he learned that the TRI Botulinum Toxin Type A (TRI-toxin) was not approved for use in humans. Beginning in February 2004, Wells began ordering TRI-toxin for use in treatments in human patients at his office. The TRI-toxin came with invoices and labels on the vials of toxin that stated the product was "for research purposes only, not for human use." Dr. Wells mixed the TRI-toxin with BOTOX/BOTOX Cosmetic, causing the drug to become adulterated in violation of 21 U.S.C. 331(k) and 333(a)(2), and then he injected the mixture into patients, representing the injection as BOTOX/BOTOX Cosmetic.

From February through November 2004, Dr. Wells defrauded approximately 200 patients who received injection treatments intended to reduce wrinkles. Dr. Wells defrauded patients by representing and selling the Botulinum toxin mixture as BOTOX/BOTOX Cosmetic. Patients injected with the Botulinum toxin mixture received pre-treatment consultations during which they were informed that they were receiving BOTOX/BOTOX Cosmetic and during which they were never informed that they would be injected with a Botulinum toxin mixture not approved for use in humans. Patients injected also signed a consent form entitled "Botox Consent form" and were told by Skinovative employees that they were receiving BOTOX/BOTOX Cosmetic. Patients who received the Botulinum toxin mixture were charged prices for treatments that were the same as, or similar to, patients who had received BOTOX/BOTOX Cosmetic. Dr. Wells misrepresentation of the Botulinum toxin mixture as BOTOX/BOTOX Cosmetic resulted in the drug being misbranded in violation of 21 U.S.C. 331(k) and 333(a)(2).

As a result of his convictions, on November 22, 2010, FDA sent Dr. Wells a notice by certified mail proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Dr. Wells was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Dr. Wells an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Wells failed to respond within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to him (Staff Manual Guide 1410.35), finds that Ivyl W. Wells has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Dr. Wells is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**), (see section 306(c)(1)(B), (c)(2)(A)(ii), (c)(2)(B), and section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Wells in any capacity during Dr. Well's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Wells provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Wells during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Dr. Wells for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2010–N–0407 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 28, 2011.

**Howard Sklamberg,**

*Director, Office of Enforcement, Office of Regulatory Affairs.*

[FR Doc. 2011–9431 Filed 4–18–11; 8:45 am]

BILLING CODE 4160–01–P

# DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3318–EM; Docket ID FEMA–2011–0001]**

## North Dakota; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of North Dakota (FEMA–3318–EM), dated April 7, 2011, and related determinations.

**DATES:** *Effective Date:* April 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the State of North Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of April 7, 2011.

Grand Forks, Pembina, Walsh, and Ward Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–9427 Filed 4–18–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–363; Extension of an Existing Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Form I–363, Request to Enforce Affidavit of Financial Support and Intent To Petition for Custody for Public Law 97–359 Amerasian; OMB Control No. 1615–0022.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until June 20, 2011.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–363. Should USCIS decide to revise Form I–363 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–363.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0022 in the subject box.

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359 Amerasian.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–363, U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–363 is used by applicants to ensure the financial support of a U.S. citizen. Without the use of Form I–363, the USCIS is not able to ensure the child does not become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (0.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 14, 2011.

**Sunday A. Aigbe,**

*Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2011–9437 Filed 4–18–11; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–765, Extension of an Existing Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Form I–765, Application for Employment Authorization; OMB Control No. 1615–0040.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 20, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–765. Should USCIS decide to revise Form I–765 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–765.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by email please add the OMB Control Number 1615–0040 in the subject box.

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–765. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information collected on this form is used by the USCIS to determine eligibility for the issuance of the employment document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at 3 hours and 25 minutes (3.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,459,520 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 13, 2011.

**Stephen Tarragon,**

*Senior Analyst, Regulatory ProductsDivision, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2011–9442 Filed 4–18–11; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form N–644; Extension of an Existing Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Form N–644, Application for Posthumous Citizenship; OMB Control No. 1615–0059.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until June 20, 2011 this 60-day period, USCIS will be evaluating whether to revise the Form N–644. Should USCIS decide to revise Form N–644 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form N–644.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0059 in the subject box.

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Overview of This Information Collection*

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–644; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 50 minutes (1.83 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 14, 2011.

**Sunday A. Aigbe,**

*Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2011–9441 Filed 4–18–11; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNMA02000–L1430000.ET0000; NMNM77967]**

### Public Land Order No. 7762; Extension of Public Land Order No. 6845; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order extends the withdrawal created by Public Land Order No. 6845 for an additional 20-year term. This extension is necessary to continue protection of the archaeological values at the Arroyo del Tajo Pictograph Site in Socorro County, New Mexico.

**DATES:** *Effective Date:* April 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ann D. Sullivan, Bureau of Land Management, Socorro Field Office, 901 S. Highway 85, Socorro, New Mexico 87801, or 575–835–0412.

**SUPPLEMENTARY INFORMATION:** The purpose for which the withdrawal was first made requires this extension to continue protection of the archaeological values at the Arroyo del Tajo Pictograph Site. The withdrawal extended by this order will expire on April 11, 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.

**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:

Public Land Order No. 6845 (56 FR 14865 (1991)), which withdrew 200 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not leasing under the mineral leasing laws, to protect the archaeological values at the Arroyo del Tajo Pictograph Site, is hereby extended for an additional 20-year period until April 11, 2031.

(Authority: 43 CFR 2310.4)

Dated: April 5, 2011.

**Wilma A. Lewis,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2011–9428 Filed 4–18–11; 8:45 am]

**BILLING CODE 4310–MW–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–479 and 731–TA–1183–1184 (Preliminary)]**

### Galvanized Steel Wire From China and Mexico

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject antidumping and countervailing duty investigations.

**DATES:** *Effective Date:* April 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Angela M.W. Newell (202–708–5409), 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 investigations may be viewed on the Commission=s electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** Effective March 31, 2011, the Commission established a schedule for the conduct of these investigations (75 FR 877, April 7, 2011). Due to scheduling conflicts, the Commission is issuing a revised schedule.

Specifically, the Commission will hold its conference on April 21, 2011, beginning at 1 p.m. Briefs are due on April 27, 2011, at 12 noon.

For further information concerning the investigations see the Commission=s notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

*Authority:* The investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: April 13, 2011.

By order of the Commission.

**James R. Holbein,**

*Acting Secretary to the Commission.*

[FR Doc. 2011–9383 Filed 4–18–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1122–0018]**

### Agency Information Collection Activities: Extension of Currently Approved Collection

**ACTION:** 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Grants to Indian Tribal Governments Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for "sixty days" until June 20,

2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection, especially the estimated public burden and associated response time, should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy Poston 202–514–5430, Attorney/Advisor, Office on Violence Against Women or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grants to Indian Tribal Governments Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0018. U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the approximately 85 grantees of the Grants to Indian Tribal Governments Program (Tribal Governments Program), a grant program authorized by the Violence Against Women Act of 2005. This discretionary grant program is designed to enhance the ability of tribes to respond to violent crimes against Indian women, enhance victim safety, and develop education and prevention strategies. Eligible applicants are recognized Indian tribal governments or their authorized designees.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 85 respondents (Tribal Governments Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal Governments Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 170 hours, that is 85 grantees completing a form twice a year with an estimated completion time for the form being one hour.

*If additional information is required contact:* Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N. Street, NE., Room 2E–808, Washington, DC 20530.

Dated: April 12, 2011.

**Lynn Murray,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. 2011–9353 Filed 4–18–11; 8:45 am]

BILLING CODE 4410–FX–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on February 25, 2011, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Coca Leaves (9040), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to manufacture bulk controlled substance for distribution to its customer.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 11, 2011.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2011–9366 Filed 4–18–11; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on January 21, 2011, Meda Pharmaceuticals Inc., 705 Eldorado Street, Decatur, Illinois 62523, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance as a finished drug product in dosage form for distribution to its customers.

The company does not import the listed controlled substance in bulk

active pharmaceutical ingredient (API) form. There are no domestic sources of Nabilone in finished drug product form available in the United States. The U.S. Food and Drug Administration has approved this product for medical use in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration, and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 19, 2011.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 11, 2011.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2011–9367 Filed 4–18–11; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 16, 2010, Mallinckrodt, Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 4-Anilino-N-Phenethyl-4-Piperidine (ANPP)(8333), a basic class of controlled substance listed in schedule II.

The company plans to use this controlled substance in the manufacture of another controlled substance.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 20, 2011.

Dated: April 11, 2011.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2011–9369 Filed 4–18–11; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 14, 2010, Norac Inc., 405 S. Motor Avenue, P.O. Box 577, Azusa, California 91702–3232, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Gamma Hydroxybutyric Acid (2010). | I |
| Tetrahydrocannabinols (7370) | I |
| Methamphetamine (1105) | II |
| Pentobarbital (2270) | II |
| Nabilone (7379) | II |

With regard to Gamma Hydroxybutyric Acid (2010), Tetrahydrocannabinols (7370), and Methamphetamine (1105) only, the company manufactures these controlled substances in bulk solely for domestic distribution within the United States to customers engaged in dosage-form manufacturing.

With regard to Nabilone (7379) only, the company presently manufactures a small amount of this controlled substance in bulk solely to conduct manufacturing process development internally within the company. It is the company's intention that, when the manufacturing process is refined to the point that its Nabilone bulk product is available for commercial use, the company will export the controlled substance in bulk solely to customers engaged in dosage-form manufacturing outside the United States. The company is aware of the requirement to obtain a DEA registration as an exporter to conduct this activity.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 20, 2011.

Dated: April 11, 2011.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2011–9370 Filed 4–18–11; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 20, 2010, and published in the **Federal Register** on December 29, 2010, 75 FR 82073, Siegfried (USA), Inc., 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

| Drug | Schedule |
|---|---|
| Gamma Hydroxybutyric Acid (2010). | I |
| Dihydromorphine (9145) | I |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Codeine (9050) | II |
| Oxycodone (9143) | II |

| Drug | Schedule |
|---|---|
| Hydromorphone (9150) | II |
| Hydrocodone (9193) | II |

| Drug | Schedule |
|---|---|
| Methadone (9250) | II |
| Methadone intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Oxymorphone (9652) | II |
| Oxycodone (9143) | II |

The company plans to manufacture the above listed controlled substances in bulk for distribution to its customers.

Drug codes 1100 (amphetamine) and 2550 (glutethimide) have been withdrawn from the application for registration at the request of the company.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siegfried (USA), Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Siegfried (USA), Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: April 11, 2011.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2011–9361 Filed 4–18–11; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 8, 2010, and published in the **Federal Register** on October 20, 2010, (75 FR 64744), Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |

The company plans to manufacture small quantities of marihuana derivatives for research purposes. In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol. In reference to drug code 7370 (Tetrahydrocannabinols), the company will manufacture a synthetic THC. No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cayman Chemical Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cayman Chemical Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: April 11, 2011.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2011–9360 Filed 4–18–11; 8:45 am]

BILLING CODE 4410–09–P

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, April 26, 2011.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The ONE item is open to the public.

**MATTER TO BE CONSIDERED:**

8093A Aviation Accident Report Crash During Unstabilized Approach, Empire Airlines Flight 8284, Avions de Transport Régional Aerospatiale Alenia ATR 42 320, N902FX, Lubbock, Texas, January 27, 2009.

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, April 22, 2011.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

**FOR FURTHER INFORMATION CONTACT:** Candi Bing, (202) 314–6403 or by e-mail at *bingc@ntsb.gov.*

Dated: April 15, 2011.

**Candi R. Bing,**

*Federal Register Liaison Officer.*

[FR Doc. 2011–9565 Filed 4–15–11; 4:15 pm]

BILLING CODE 7533–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0082]**

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 24, 2011, to April 6, 2011. The last biweekly notice was published on April 5, 2011 (76 FR 18801).

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration.

Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten

(10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

*Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit 1 and 2, Calvert County, Maryland*

*Date of amendments request:* October 25, 2010.

*Description of amendments request:* The amendment would revise Technical Specification Limiting Condition for Operation (LCO) 3.0.5 to provide clarification as to when the LCO can be invoked in order to perform required testing to demonstrate OPERABILITY of equipment.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to LCO 3.0.5 more clearly specifies the situations when LCO 3.0.5 can be applied. In some Technical Specifications, the steps taken to comply with ACTIONS involve the placement of redundant or alternate equipment or trains into service, or the repositioning (*e.g.,* opening or closing) or components. The proposed change would allow the use of LCO 3.0.5 in situations such as these. This proposed change does not, however, change the intent of LCO 3.0.5. The purpose of LCO 3.0.5 remains to provide an exception to LCO 3.0.2, to not comply with the applicable Required Action(s) while performing required testing to demonstrate the OPERABILITY of either equipment being returned to service or the OPERABILITY of other equipment.

The proposed change does not affect any analyzed accident initiators, nor does it change the units' ability to successfully respond to any previously evaluated accident. As a result, there is also no change to existing radiological assumptions used in the accident evaluations. In addition this proposed change does not change the operation or maintenance performed on operating equipment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to LCO 3.0.5 more clearly specifies the situations when LCO 3.0.5 can be applied. In some Technical Specifications, the steps taken to comply with ACTIONS involve the placement of redundant or alternate equipment or trains into service, or the repositioning (*e.g.,* opening or closing) or components. The proposed change would allow the use of LCO 3.0.5 in situations such as these. This proposed change does not, however, change the intent of LCO 3.0.5. The purpose of LCO 3.0.5 remains to provide an exception to LCO 3.0.2, to not comply with the applicable Required Action(s) while performing required testing to demonstrate the OPERABILITY of either equipment being returned to service or the OPERABILITY of other equipment.

The proposed change does not involve a modification to the physical configuration of the units nor does it involve any change in the methods governing normal plant operation. The proposed change does not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally there is no change in the types or increase in the amounts of any effluent that may be released offsite and there is no increase in individual or cumulative occupational exposure.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change to LCO 3.0.5 more clearly specifies the situations when LCO 3.0.5 can be applied. In some Technical Specifications, the steps taken to comply with ACTIONS involve the placement of redundant or alternate equipment or trains into service, or the repositioning (*e.g.,* opening or closing) or components. The proposed change would allow the use of LCO 3.0.5 in situations such as these. This proposed change does not, however, change the intent of LCO 3.0.5. The purpose of LCO 3.0.5 remains to provide an exception to LCO 3.0.2, to not comply with the applicable Required Action(s) while performing required testing to demonstrate the OPERABILITY of either equipment being returned to service or the OPERABILITY of other equipment.

The proposed change does not involve any modification to the physical configuration of the operating units and does not alter equipment operation. As such, the safety functions of plant equipment and their response to any analyzed accident scenario are unaffected by this proposed change and thus there is no reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in the margin of safety for the operation of each unit.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

*NRC Branch Chief:* Nancy L. Salgado.

*Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit 1 and 2, Calvert County, Maryland*

*Date of amendments request:* March 22, 2011.

*Description of amendments request:* The proposed amendment would revise the Technical Specifications (TSs) to define a new time limit for restoring inoperable reactor coolant system (RCS) leakage detection instrumentation to operable status. The proposed TS changes are consistent with TS Task Force (TSTF)–513, "Revise PWR [pressurized-water reactor] Operability Requirements and Actions for RCS Leakage Instrumentation."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated. The plant specific variation to this license amendment request, to insert the Note "Not required until 12 hours after establishment of steady state operation" into applicable portions of the Technical Specification is administrative in nature. As a result, its inclusion does not impact any plant equipment's ability to perform its required functions. Therefore, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change maintains sufficient continuity and diversity of leak detection capability that the probability of piping evaluated and approved for leak-before-break progressing to pipe rupture remains extremely low. The plant specific variation to this license amendment request, to insert the Note "Not required until 12 hours after establishment of steady state operation" into applicable portions of the Technical Specification also does not involve a physical alteration of the plant or change in how plant equipment is operated. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the containment atmosphere gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure. The plant specific variation to this license amendment request, to insert the Note "Not required until 12 hours after establishment of steady state operation" into applicable portions of the Technical Specification provides clarification as it reflects the time necessary for plant conditions to stabilize in order to ensure an accurate water inventory can be obtained.

Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety. The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

*NRC Branch Chief:* Nancy L. Salgado.

*Carolina Power and Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina*

*Date of amendment request:* October 20, 2010.

*Description of amendment request:* The proposed amendment would revise the technical specifications (TS) description of fuel assemblies specified in TS 4.2.1. Additionally, changes are requested to the analytical methods referenced in TS 5.6.5.b. The changes to TS 5.6.5.b includes the addition of AREVA topical reports, BAW–10240(P)(A), "Incorporation of M5™ Properties in Framatome ANP Approved Methods," and EMF–2328(P)(A), "PWR Small Break LOCA Evaluation Model S–RELAP5 Based," and the deletion of nine analytical methods that were previously approved but are no longer planned to be used, and therefore have not been analyzed for acceptability for M5™ (M5) alloy fuel.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed license amendment adds a Nuclear Regulatory Commission approved analytical method, BAW–10240(P)(A), "Incorporation of M5™ Properties in Framatome ANP Approved Methods," used to determine the core operating limits, to Technical Specification (TS) 5.6.5.b and changes the description of fuel assemblies specified in TS 4.2.1 to allow use of the M5 alloy. The proposed amendment does not affect the acceptance criteria for any Final Safety Analysis Report (FSAR) safety analysis analyzed accidents or anticipated operational occurrences. The proposed amendment does not involve operation of the required structures, systems or components (SSCs) in a manner different from those previously recognized or evaluated. As such, the proposed amendment does not increase the probability or consequences of an accident.

In addition, the proposed license amendment adds NRC approved methodology EMF–2328(P)(A), "PWR Small Break LOCA Evaluation Model, S–RELAP5 Based." This change, by itself, does not impact the current design bases. The proposed change enables the use of new methodologies to re-analyze small break loss-of-coolant accidents. Revised analyses may either result in continued conformance within design bases, or may change the design bases. If design bases changes result from a revised analysis, then the specific design changes will be evaluated in accordance with HBRSEP, Unit 2, design change procedures and 10 CFR 50.59. Further, this part of the change does not involve physical changes to any plant structure, system, or component.

In addition, the proposed license amendment deletes nine analytical methods that were previously approved and listed in Section 5.6.5.b, but are no longer planned to be used. This change is administrative in nature as it removes methodologies that have become obsolete and hence have not been analyzed for acceptability with M5 fuel.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

Use of M5 fuel will not result in changes in the operation or configuration of the facility. Topical reports BAW–10227(P)(A) and BAW–10240(P)(A) evaluate the material properties of the M5 alloy and conclude that they are similar or better than those of zircaloy-4. Therefore, M5 fuel rod cladding will perform similarly to those fabricated from zircaloy-4, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident. No new failure mechanisms will be introduced by the changes being requested.

The proposed addition of EMF–2328(P)(A) does not involve any physical alteration of plant systems, structures, or components, other than allowing for fuel design in accordance with NRC-approved methodologies. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no change to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result, no new failure modes are being introduced by introduction of this methodology.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the M5 alloy are not significantly different from those of zircaloy-4. M5 alloy is expected to perform similarly or better than zircaloy-4 for all normal operating and accident scenarios, including both loss-of-coolant accident (LOCA) and non-LOCA scenarios. The proposed changes do not affect the acceptance criteria for any FSAR safety analysis analyzed accidents or anticipated operational occurrences. All required safety limits would continue to be analyzed using methodologies approved by the Nuclear Regulatory Commission.

There is no impact on any margin of safety resulting from the incorporation of these new topical reports into the Technical Specifications. If design basis changes result from a revised analysis that uses these new methodologies, the specific design changes will be evaluated in accordance with HBRSEP, Unit 2, design change procedures and 10 CFR 50.59. Any potential reduction in the margin of safety would be evaluated for that specific design change.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Branch Chief:* Douglas A. Broaddus.

*Carolina Power and Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina*

*Date of amendment request:* January 13, 2011.

*Description of amendment request:* The proposed amendment would revise Technical Specifications (TSs) to change the description of fuel assemblies specified in TS 5.3.1 and add the AREVA NP Inc., topical report, BAW–10240(P)(A), "Incorporation of M5™ Properties in Framatome ANP Approved Methods," to the referenced analytical methods in administrative TS 6.9.1.6.2 to allow the use of M5™ alloy for fuel rod cladding.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed license amendment adds a NRC approved analytical method, BAW–10240(P)(A), "Incorporation of M5™ Properties in Framatome ANP Approved Methods," used to determine the core operating limits, to TS 6.9.1.6.2 and changes the description of fuel assemblies specified in TS 5.3.1 to allow use of the M5™ alloy. The proposed amendment does not affect the acceptance criteria for any Final Safety Analysis Report (FSAR) safety analysis analyzed accidents and anticipated operational occurrences. As such, the proposed amendment does not increase the probability or consequences of an accident. The proposed amendment does not involve operation of the required structures, systems or components (SSCs) in a manner or configuration different from those previously recognized or evaluated. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

Use of M5™ clad fuel will not result in changes in the operation or configuration of the facility. Topical Report BAW–10240 describes, by reference, that the material properties of the M5™ alloy are similar to or better than those of Zircaloy-4. Therefore, since M5™ fuel rod cladding will perform similarly to those fabricated from Zircaloy-4, the possibility of the fuel becoming an accident initiator and causing a new or different type of accident is precluded. Since the material properties of M5™ alloy are similar to or better than those of Zircaloy-4, there will be no significant changes in the types of any effluents that may be released off-site. There will not be a significant increase in occupational or public radiation exposure. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the changes being requested. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the M5™ alloy are not significantly different from those of Zircaloy-4. M5™ alloy is expected to perform similarly to or better than Zircaloy-4 for all normal operating and accident scenarios, including both loss-of-coolant accident (LOCA) and non-LOCA scenarios. The proposed changes do not affect the acceptance criteria for any FSAR safety analysis analyzed accidents or anticipated operational occurrences. All required safety limits will continue to be analyzed using methodologies approved by the NRC. Therefore, the proposed amendment would not involve a significant reduction in a margin of safety. margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Branch Chief:* Douglas A. Broaddus.

*Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina*

*Date of amendment request:* January 20, 2011.

*Description of amendment request:* The proposed change would revise H. B. Robinson Steam Electric Plant Technical Specifications (TS) Section 3.8.3, "Diesel Fuel Oil and Starting Air," and Section 3.8.5, "DC Sources—Shutdown." The proposed change to TS 3.8.3 revises a nonconservative air receiver tank pressure to a value consistent with vendor recommendations. The proposed change to TS 3.8.5 corrects an editorial error related to TS formatting.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to TS 3.8.3 revises a non-conservative value in the current TS for EDG air start pressure. The proposed value is consistent with vendor recommendations and will ensure that the intent of the TS requirement is met. Therefore, the proposed change will provide improved assurance that the EDGs will be able to meet their safety function.

The proposed change to TS 3.8.5 is an editorial correction and there will be no actual changes to plant design or operation.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

As described above, the proposed change to TS 3.8.3 provides improved assurance that the EDGs will be able to meet their safety function. No new failure modes are introduced. Therefore, no new accident initiators or precursors are introduced by the proposed change.

The proposed change to TS 3.8.5 is an editorial correction and there will be no actual changes to plant design or operation.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

As described above, the proposed change to TS 3.8.3 provides improved assurance that the EDGs will be able to meet their safety function of mitigating events that involve a loss of offsite power. Therefore, the proposed change will preserve any margin of safety.

The proposed change to TS 3.8.5 is an editorial correction and there will be no actual changes to plant design or operation.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David T. Conley, Associate General Counsel II—Legal Department, Progress Energy

Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Branch Chief:* Douglas A. Broaddus.

*Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota*

*Date of amendment request:* February 7, 2011.

*Description of amendment request:* The licensee proposed to amend the MNGP Technical Specifications (TS), revising Surveillance Requirement 3.5.1.7 regarding the Emergency Core Cooling System (ECCS) core spray flow from a minimum of 2800 gpm to a minimum of 2835 gpm. The licensee considers the current minimum flow rate requirement as non-conservative.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC) analysis. The NRC staff reviewed the licensee's NSHC analysis and has prepared its own as follows:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The purpose of the minimum core spray flow rate requirement is to ensure that the ECCS will perform as designed. Of the postulated accidents and transients previously analyzed in the MNGP Updated Safety Analysis Report, none of them were postulated to be initiated by the ECCS performing as designed.

Furthermore, the consequences of the previously analyzed accidents were not postulated to be exacerbated by the ECCS performing as designed. Accordingly, the probability of occurrence and the consequences of the previously analyzed accidents would not be affected in any way by the proposed amendment to the TS.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment does not involve any physical alteration of the plant (no new or different type of equipment will be installed) nor does it change methods and procedures governing plant operation. The proposed amendment will not impose any new or eliminate any old requirements. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed amendment will not have any effect on previously used safety analysis methods, scenarios, acceptance criteria, or assumptions. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its own analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Attorney for the licensee:* Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

*NRC Branch Chief:* Robert J. Pascarelli.

*Virginia Electric and Power Company, Docket No. 50–281, Surry Power Station, Unit 2, Surry County, Virginia*

*Date of amendment request:* December 16, 2010.

*Description of amendment request:* This amendment request proposes to revise Technical Specification (TS) 6.4.Q, "Steam Generator (SG) Program," to exclude portions of the SG tube below the top of the SG tubesheet from periodic tube inspections for Unit 2 during Refueling Outage 23 and the subsequent operating cycle. This amendment request also proposes to revise TS 6.6.A.3, "Steam Generator Tube Inspection Report," to provide reporting requirements specific to Unit 2 for the temporary alternate repair criteria.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection/repair criteria and the steam generator inspection reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the steam generator tube inspection and repair criteria are the steam generator tube rupture (SGTR) event and the steam line break (SLB) postulated accidents.

During the SGTR event, the required structural integrity margins of the steam generator tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the tube-to-tubesheet joint. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes," are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural integrity of the steam generator tubes and does not affect other systems, structures, components, or operational features. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from primary water stress corrosion cracking below the proposed limited inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary to secondary leakage flow during the event. However, primary to secondary leakage flow through a postulated broken tube is not affected by the proposed changes since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically expanded outside diameter. Therefore, the proposed changes do not result in a significant increase in the consequences of a SGTR.

The consequences of a steam line break (SLB) are also not significantly affected by the proposed changes. During a SLB accident, the reduction in pressure above the tubesheet on the shell side of the steam generator creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary to secondary leakage below the midplane.

Primary to secondary leakage from tube degradation in the tubesheet area during the limiting accident (i.e., a SLB) is limited by flow restrictions. These restrictions result from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications.

The probability of a SLB is unaffected by the potential failure of a steam generator tube as the failure of the tube is not an initiator for a SLB event.

The leakage factor of 2.03 is a bounding value for all SGs, both hot and cold legs, in

Table 9–7 of WCAP–17092–P. Also as shown in Table 9–7 of WCAP–17092–P, for Surry for a postulated SLB, a leakage factor of 1.80 has been calculated. However, for Surry, a more conservative leakage factor of 2.03 will be applied to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) assessment and the operational assessment (OA). Specifically, for the CM assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.03 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the OA, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.03 and compared to the observed operational leakage.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change that alters the steam generator inspection/repair criteria and the steam generator inspection reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change that alters the steam generator inspection/repair criteria and the steam generator inspection reporting criteria maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI [Nuclear Energy Institute] 97–06, Revision 2, "Steam Generator Program Guidelines," and RG 1.121 are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting GDC [General Design Criteria] 14, "Reactor Coolant Pressure Boundary," GDC 15, "Reactor Coolant System Design," GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary," and GDC 32, "Inspection of Reactor Coolant Pressure Boundary," by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, the H* analysis, documented in Section 4 of the license amendment request, defines a length of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

*NRC Branch Chief:* Gloria Kulesa.

## Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*STP Nuclear Operating Company, Docket Nos. 50–498 and 50–449, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* May 18, 2010, as supplemented by letter dated March 1, 2011.

*Brief description of amendment request:* The proposed amendment would revise Technical Specification (TS) 6.8.3.I, "Containment Post-Tensioning System Surveillance Program." TS 6.8.3.I states that the containment post-tensioning system surveillance program shall be in accordance with American Society of Mechanical Engineers (ASME) Code, Section XI, Subsection IWL, 1992 Edition with 1992 Addenda, as supplemented by 10 CFR 50.55a(b)(2)(viii).

The proposed amendment removes the specific year of the applicable Code edition consistent with Revision 3.1 of NUREG–1431, "Standard Technical Specifications, Westinghouse Plants" and will allow for future updates to the surveillance program when the applicable code edition changes without requiring additional TS changes.

*Date of publication of individual notice in the* ***Federal Register:*** March 22, 2011 (76 FR 16012).

*Expiration date of individual notice:* April 21, 2011 (public comments); May 23, 2011 (hearing requests).

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

*Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* March 31, 2010, as supplemented by letter dated November 30, 2010.

*Brief description of amendments:* The amendments revised the Technical Specifications to relocate specific surveillance frequencies to a licensee-controlled program using a risk-informed justification.

*Date of issuance:* March 29, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* 263, 259.

*Renewed Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the licenses and the technical specifications.

*Date of initial notice in the* ***Federal Register:*** November 16, 2010 (75 FR 70034). The supplement dated November 30, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 29, 2011.

No significant hazards consideration comments received: No.

*Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of application for amendments:* March 24, 2010, as supplemented by letters dated November 18, 2010, and March 2, 2011.

*Brief description of amendments:* The amendments revised the Technical Specifications to relocate specific surveillance frequencies to a licensee-controlled program using a risk-informed justification.

*Date of issuance:* March 29, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* 261, 241.

*Renewed Facility Operating License Nos. NPF–9 and NPF–17:* Amendments revised the licenses and the technical specifications.

*Date of initial notice in the* ***Federal Register:*** November 16, 2010 (75 FR 70035).

The supplements dated November 18, 2010, and March 2, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 29, 2011.

No significant hazards consideration comments received: No.

*Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of application for amendment:* March 15, 2010, as supplemented by letters dated August 30, 2010, September 21, 2010, January 31, 2011, and February 18, 2011.

*Brief description of amendment:* This amendment request would modify the Technical Specifications to revise the setpoint and setpoint tolerances for safety relief valves (SRVs) and spring safety valves (SSVs) and support the plant modifications associated with the replacement of (1) four Target Rock two-stage SRVs with three-stage SRVs, and (2) two existing Dresser 3.749 inch throat diameter SSVs with Dresser 4.956 inch throat diameter SSVs.

*Date of issuance:* March 28, 2011.

*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendment No.:* 235.

*Facility Operating License No. DPR–35:* The amendment revised the License and Technical Specifications.

*Date of initial notice in the* ***Federal Register:*** May 4, 2010 (75 FR 23812).

The supplemental letters dated August 30, 2010, September 21, 2010, January 31, 2011, and February 18, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 28, 2011.

No significant hazards consideration comments received: No.

*Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Date of application for amendment:* August 31, 2010.

*Brief description of amendments:* The amendments involve administrative changes to the Technical Specifications (TSs). The changes involve: (1) Making an editorial change to Limerick Generating Station (LGS) Unit 1 TS Limiting Condition for Operation (LCO) 3.3.1, Action b; (2) making an editorial change to LGS Units 1 and 2 TS Table 3.3.1–1, Actions 2 and 9; (3) making the layout and format of LGS Unit 1 TS LCO 3.6.5.3 Action requirements consistent with the LGS Unit 2 LCO Action requirements for the same TS; and (4) adding a reference to the minimum required number of operable main turbine bypass valves and the turbine bypass system response time to the core operating limits documented in the Core Operating Limits Report as specified in LGS, Units 1 and 2, TS 6.9.1.9.

*Date of issuance:* March 31, 2011.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment Nos.:* 200 and 161.

*Facility Operating License Nos. NPF–39 and NPF–85.* The amendments revised the license and the technical specifications.

*Date of initial notice in the* ***Federal Register:*** November 2, 2010 (75 FR 67402).

The Commission's related evaluation of the amendment is contained in Safety Evaluation dated March 31, 2011.

No significant hazards consideration comments received: No.

*Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania*

*Date of application for amendment:* December 15, 2010, as supplemented on February 17, 2011, and March 17, 2011.

*Brief description of amendment:* The changes revise the Technical Specification (TS) relating to the Safety Limit Minimum Critical Power Ratios (SLMCPRs). The changes result from a cycle specific analysis performed to support the operation of Limerick

Generating Station, Unit 2, in the upcoming Cycle 12. Specifically, the TS changes will revise the SLMCPRs contained in TS 2.1 for two recirculation loop operation and single recirculation loop operation to reflect the changes in the cycle specific analysis. The new SLMCPRs are calculated using Nuclear Regulatory Commission-approved methodology described in NEDE 24011–P–A, General Electric Standard Application for Reactor Fuel, Revision 17.

*Date of issuance:* April 5, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 30 days of issuance.

*Amendment No.:* 162.

*Facility Operating License No. NPF–85.* The amendment revised the license and the technical specifications.

*Date of initial notice in the **Federal Register:*** February 1, 2011 (76 FR 5620). The supplements dated February 17, 2011, and March 17, 2011, clarified the application, did not expand the scope of the application as originally noticed, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 2011.

No significant hazards consideration comments received: No.

*Indiana Michigan Power Company (IandM), Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan*

*Date of application for amendment:* March 19, 2009, as supplemented on November 20, 2009, February 24, March 11, and March 25, 2011.

*Brief description of amendment:* The amendment adopts a new analysis of a large-break loss-of-coolant accident, and revises the Technical Specifications to reflect this new analysis, which was performed using a plant-specific adaptation of the NRC-approved methodology set forth in Westinghouse Topical Report WCAP–16009–P–A, "Realistic Large-Break LOCA Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM)."

*Date of issuance:* March 31, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 297.

*Facility Operating License No. DPR–74:* Amendment revised the Renewed Operating License and Technical Specifications.

*Date of initial notice in the **Federal Register:*** August 11, 2009 (74 FR 40238).

The supplemental information contained clarifying information, did not change the scope of the license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2011.

No significant hazards consideration comments received: No.

*Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Unit 1 and 2, Somervell County, Texas*

*Date of amendment request:* December 1, 2010.

*Brief description of amendments:* The amendments revised the inspection scope and repair requirements in Technical Specification (TS) 5.5.9, "Unit 1 Model D76 and Unit 2 Model D5 Steam Generator (SG) Program," to exclude portions of the Comanche Peak Nuclear Power Plant (CPNPP), Unit 2, Model D5 SG tubes below the top of the SG tubesheet from periodic SG tube inspections. In addition, the amendments revised TS 5.6.9, "Unit 1 Model D76 and Unit 2 Model D5 Steam Generator Tube Inspection Reports," to provide reporting requirements specific to CPNPP, Unit 2, for the temporary alternate repair criteria. The changes are applicable only to CPNPP, Unit 2, during Refueling Outage 12 and the subsequent operating cycle.

*Date of issuance:* April 6, 2011.

*Effective date:* As of the date of issuance and shall be implemented prior to Mode 4 entry during startup from Unit 2 Refueling Outage 12.

*Amendment Nos.:* Unit 1—154; Unit 2—154.

*Facility Operating License Nos. NPF–87 and NPF–89:* The amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in the **Federal Register:*** February 1, 2011 (76 FR 5622).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 6, 2011. No significant hazards consideration comments received: No.

*NextEra Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of application for amendments:* April 7, 2009, as supplemented by letters dated June 17 (two letters), September 11, September 25, October 9, November 20 (two letters), November 21 (two letters), November 30, December 8, and December 16 of 2009; and January 7, January 8, January 22, February 11, February 25, March 3, April 15, April 22, April 28, July 8, July 28, August 2, August 9, August 24, October 15, November 1, November 12 (two letters), November 30, and December 21 of 2010. The proposed changes were originally included as part of the April 7, 2009, extended power uprate (EPU) license amendment request, but subsequently divided into a separate licensing action for independent technical review.

*Brief description of amendments:* The amendment changes the AFW system design and Technical Specifications (TS) 3.7.5, "Auxiliary Feedwater (AFW)," and TS 3.7.6, "Condensate Storage Tank (CST)," resulting from (1) modifications to the AFW system to support requirements for transients and other accidents at EPU conditions; (2) installation of main feedwater isolation valves to support accident mitigation by ensuring that containment pressure does not exceed safety analysis limits; (3) automatic AFW switchover from a CST suction source to a safety-related Service Water source; and (4) instrumentation setpoint changes supporting the aforementioned physical modifications. The upgrades and modifications to the AFW system are being installed to provide additional capacity and reliability for the system. Although the proposed changes are also designed to support the requirements for transients and other accidents at EPU conditions, the changes for this amendment have been evaluated using the current licensing basis.

*Date of issuance:* March 25, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 180 days.

*Amendment Nos.:* 238, 242.

*Renewed Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revise the License, Appendix C, and the Technical Specifications.

*Date of initial notice in the **Federal Register:*** September 21, 2010 (75 FR 57525).

The supplemental letters contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 25, 2011. No significant hazards consideration comments received: No.

*NextEra Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of application for amendments:* April 7, 2009, as supplemented by letters dated June 17, September 11, September 25, November 20, November 30, and December 8 of 2009; February 11, February 25, April 22, April 30, July 21, July 28, August 2, and September 28 of 2010.

*Brief description of amendments:* The amendment changed the Technical Specifications to support (1) modifications to the AFW system; (2) an EPU to increase plant core thermal power from 1,540 megawatts thermal (MWt) to 1,800 MWt; and (3) update non-conservative RPS and ESFAS setpoints not associated with the EPU. The amendment also modified the RPS instrumentation setpoints of TS Table 3.3.1–1 and the ESFAS instrumentation setpoints of TS Table 3.3.2–1. The changes include both EPU and non-EPU related setpoints. The revised TS allowable values have been calculated to account for new analytical limits, instrument uncertainties, and instrument drift. The changes also include the addition of a new column entitled Nominal Trip Setpoint that was added to provide consistency with the TS Table format in NUREG 1431, "Standard Technical Specifications—Westinghouse Plants," and Technical Specification Task Force (TSTF)–493, Revision 4, "Clarify the Application of Setpoint Methodology for Limiting Safety System Setting (LSSS) Functions." The RPS and ESFAS instrumentation uncertainty/setpoint calculations have also been revised to eliminate the use of a single-sided reduction factor in the total loop error determination for LSSS setpoints.

*Date of issuance:* March 25, 2011.

*Effective date:* As of the date of issuance, and shall be implemented prior to Unit 1 startup from the Fall 2011 refueling outage (Unit 1) and within 180 days (Unit 2).

*Amendment Nos.:* 239 and 243.

*Renewed Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revised the Technical Specifications/License.

*Date of initial notice in the* ***Federal Register:*** September 21, 2010 (75 FR 57524).

The supplemental letters contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 25, 2011. No significant hazards consideration comments received: No.

*PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of application for amendment:* March 29, 2010, as supplemented by letters dated May 28, and September 30, 2010, and two letters dated February 14, 2011.

*Brief description of amendment:* The amendment modifies the Technical Specifications (TSs) to extend the allowed outage time for the A and B emergency diesel generators from 72 hours to 14 days.

*Date of issuance:* March 25, 2011.

*Effective date:* As of the date of issuance, to be implemented within 60 days.

*Amendment No.:* 188.

*Facility Operating License No. NPF–57:* The amendment revised the TSs and the License.

*Date of initial notice in the* ***Federal Register:*** June 29, 2010 (75 FR 37476). The letters dated May, 28, and September 30, 2010, and February 14, 2011 (two letters), provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 2011. No significant hazards consideration comments received: No.

*Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* April 13, 2010, as supplemented by letters dated October 13 and December 21, 2010, and January 18, 2011.

*Brief description of amendment:* The amendment revised Technical Specification (TS) Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation," by adding a footnote to Function 8.a concerning the reactor trip P–4 engineered safety feature actuation system interlock. The footnote specifies which functions of the interlock are necessary in each mode in order to meet the limiting condition for operation. Specifically, the functions of tripping the main turbine and isolating main feedwater with a coincident low average temperature would no longer be applicable in MODE 3, which is hot standby. Revised TS Table 3.3.2–1 also identifies that the function of the P–4 interlock that allows arming of the steam dump valves and transfers the steam dump load rejection ($T_{avg}$) controller to the plant trip controller is not required in any mode.

*Date of issuance:* March 30, 2011.

*Effective date:* The amendment will be effective upon issuance and will be implemented within 90 days from the date of issuance.

*Amendment No.:* 194.

*Renewed Facility Operating License No. NPF–42.* The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in the* ***Federal Register:*** June 15, 2010 (75 FR 33844). The supplemental letters dated October 13 and December 21, 2010, and January 18, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation March 30, 2011. No significant hazards consideration comments received: No.

*Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* November 30, 2010.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 5.5.9, "Steam Generator (SG) Program," to exclude portions of the tube below the top of the steam generator tubesheet from periodic steam generator tube inspections during Refueling Outage 18 and the subsequent operating cycle. In addition, TS 5.6.10, "Steam Generator Tube Inspection Report" will be revised to remove a reference to the previous interim alternate repair criteria and to provide reporting requirements specific to the temporary alternate repair criteria.

*Date of issuance:* April 6, 2011.

*Effective date:* The amendment is effective upon issuance and will be implemented prior to MODE 4 entry during startup from Refueling Outage 18.

*Amendment No.:* 195.

*Renewed Facility Operating License No. NPF–42.* The amendment revised

the Operating License and Technical Specifications.

*Date of initial notice in the* ***Federal Register:*** February 1, 2011 (76 FR 5623).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 2011. No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 8th day of April 2011.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–9177 Filed 4–18–11; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–027; NRC–2011–0083]**

## Washington State University; Facility Operating License No. R–76; Washington State University Modified TRIGA Nuclear Radiation Center Reactor (NRCR); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of a renewed Facility Operating License No. R–76, to be held by Washington State University (WSU or the licensee), which would authorize continued operation of the Washington State University Modified TRIGA Nuclear Radiation Center Reactor (NRCR), located in the Dodgen Research Facility on Roundtop Drive in Pullman, Whitman County, Washington. Therefore, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) § 51.21, the NRC is issuing this Environmental Assessment and Finding of No Significant Impact.

### Environmental Assessment

### Identification of Proposed Action

The proposed action would renew Facility Operating License No. R–76 for a period of twenty years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee's application dated June 24, 2002, as supplemented by letters dated August 15, 2007, June 13, 2008, and April 7, 2010. In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the renewal application.

### Need for the Proposed Action

The proposed action is needed to allow the continued operation of the NRCR to routinely provide teaching opportunities, services and research for numerous institutions for a period of twenty years.

### Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action to issue a renewed Facility Operating License No. R–76 to allow continued operation of the NRCR for a period of twenty years and concludes there is reasonable assurance that the NRCR will continue to operate safely for the additional period of time. The details of the NRC staff's safety evaluation will be provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application. This document contains the environmental assessment of the proposed action.

The NRCR is located 1.27 kilometers (0.79 miles) east of the French Administration Building on the main campus of WSU. The NRCR is located in the Dodgen Research Facility. The Dodgen Research Facility is a multi-purpose building constructed primarily of concrete, brick, steel, and aluminum. The entrance to the Dodgen Research Facility is secured and an access code is required for entry. Emergency exit doors in the Dodgen Research Facility are key-locked from the outside and only a few individuals are issued the key. Entry into the NRCR from the Dodgen Research Facility requires a special key or confirmation of identity through closed-circuit television and verbal contact with the reactor operators. There are three outside entrances allowing direct access to the NRCR. These entrances are secured and the area around each one is surrounded by a fence and jersey barriers. The exclusion zone is considered to be the perimeter of the reactor building. A road and unused land is located west of the site. Until late 2008, the site was surrounded for a distance of 400 meters (1300 feet) in all directions by grazing land for livestock which was owned by WSU. The land has since been converted into a golf course which surrounds the NRCR in all directions except the west. The land remains uninhabited. The golf course is separated from the NRCR by 100 to 200 meters (330 to 660 feet) of land. There is a parcel of land abutting the NRCR of about 10,000 square meters (109,000 square feet) of virgin prairie land which, by regulation or policy, WSU has no plans to use. The closest building is 411 meters (1350 feet) west of the NRCR. The closest occupied dwellings are 626 meters (2060 feet) to the west-southwest.

The NRCR is a pool-type, light water moderated and cooled research reactor licensed to operate at a maximum steady-state power level of 1 megawatt thermal power (MW(t)). The reactor is also licensed to operate in a pulse mode to a peak power of approximately 2,000 MW(t). The fuel is contained in a reactor vessel suspended from a movable bridge and is located near the bottom of an 8 meter (25 feet) deep concrete pool containing approximately 242,000 liters (63,930 gallons) of water. The reactor is fueled with standard low-enriched uranium TRIGA (Training, Research, Isotopes, General Atomic) fuel. A detailed description of the reactor can be found in the NRCR Safety Analysis Report (SAR). There have been two major modifications to the Facility Operating License since renewal of the license on August 11, 1982. Orders were issued: (1) Allowing for an increase in the possession limits for Uranium-235; and (2) conversion from high-enriched uranium fuel to low-enriched uranium fuel as amendments to the license.

The licensee has not requested any changes in the NRCR design or operating conditions as part of the application for license renewal. No changes are being made in the types or quantities of effluents that may be released off site. The licensee has systems in place for controlling the releases of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents. Accordingly, there would be no increase in routine occupational or public radiation exposure as a result of the license renewal. As discussed in the NRC staff's safety evaluation, the proposed action will not significantly increase the probability or consequences of accidents. Therefore, license renewal would not change the environmental impact of NRCR operation. The NRC staff evaluated information contained in the licensee's application and data reported to the NRC by the licensee for the last five years of operation to determine the projected radiological impact of the NRCR on the environment during the period of the renewed license. The NRC staff finds that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on this evaluation, the NRC staff concludes that continued operation of the reactor would not have a significant environmental impact.

*I. Radiological Impact*

Environmental Effects of Reactor Operations

Gaseous radioactive effluents are vented from the reactor building by the NRCR exhaust system via two vents. The vents discharge the effluents to a common stack located on the roof of the Dodgen Research Facility. The effluents are discharged at a volumetric flow rate of approximately 5.504 E+12 milliliters per month (4,500 cubic feet per minute). The only significant radionuclide found in the gaseous effluent stream is Argon-41. The licensee performed measurements of Argon-41 production over a five-year period to obtain an average release rate. Licensee calculations, based on those measurements, indicate that annual Argon-41 releases result in an offsite concentration of 2.1 E–10 microcuries per milliliter (uCi/ml), which is below the limit of 1.0 E–08 uCi/ml specified in 10 CFR part 20, Appendix B for air effluent releases. The NRC staff performed independent calculations and found the licensee's calculations to be reasonable. The NRC staff also reviewed measurements and calculations performed by the licensee to estimate the potential release of tritium resulting from evaporation of the reactor pool water, and found them to be reasonable. The potential airborne tritium concentration was found to be a small fraction of the air effluent concentration limit specified in 10 CFR Part 20, Appendix B. Total gaseous radioactive releases reported to the NRC in the licensee's annual reports were less than 0.1 percent of the air effluent concentration limits set by 10 CFR part 20, Appendix B. The potential radiation dose to a member of the general public resulting from this concentration is approximately 0.001 milliSieverts (mSv) (0.1 millirem (mrem)) and this demonstrates compliance with the dose limit of 1 mSv (100 mrem) set by 10 CFR 20.1301. Additionally, this potential radiation dose demonstrates compliance with the air emissions dose constraint of 0.1 mSv (10 mrem) specified in 10 CFR 20.1101(d).

The licensee disposes of liquid radioactive waste by discharge to the sanitary sewer. The Radiation Safety Office (RSO), which is part of the WSU Department of Environmental Health and Safety, monitors the levels of radioactive waste discharged to the sanitary sewer. Discharge of liquid waste is initially to a holdup tank where levels of radioactive waste are measured and the contents diluted, if necessary to meet 10 CFR Part 20 discharge limits to the sanitary sewer. The RSO calculated that discharges to the sanitary sewer were in the order of 4 E–08 uCi/ml. The NRC staff reviewed the licensee's procedures and results and found they met the requirements of 10 CFR 20.2003 for disposal by release to the sanitary sewer.

An NRC inspection was performed from September 8–10, 1998, to review the circumstances behind the leakage of pool water through the concrete of the reactor pool wall. The licensee determined that leakage was due to the porosity of the concrete and the penetrations for the beam tubes. The pool water which leaked either evaporated or collected in the fuel storage area and drained into the facility waste holding tank where it was analyzed and found to comply with the release limits of 10 CFR Part 20, Appendix B for liquid effluent. The reactor pool leak was successfully repaired in 1999. The NRC inspection report related to the reactor pool leakage concluded that management of liquid effluents was appropriate and identified no findings of significance.

The licensee monitored the activity level in the waters in the vicinity of the NRCR, including the South Fork of the Palouse River, local tap water, and effluent from the sewage treatment plant and did not detect elevated levels of radioactive material attributable to the operation of the NRCR.

The RSO oversees the handling of solid low-level radioactive waste generated at the NRCR. Solid radioactive waste consists mainly of spent ion resins and neutron activation products which are packaged by the licensee for shipment by a low-level waste broker in accordance with all applicable regulations for transportation of radioactive materials. If neutron activated or other licensed material is removed from the NRCR by the RSO or a researcher, the licensed material is transferred to the University for uses authorized under its broad scope byproduct material license. The licensee transferred the irradiated high-enriched uranium and FLIP fuels to Idaho National Engineering Laboratory in August 2009. The remaining unirradiated FLIP fuel will be transferred to Oak Ridge National Laboratory. To comply with the Nuclear Waste Policy Act of 1982, WSU entered into a contract with the U.S. Department of Energy (DOE) that provides that DOE retains title to the fuel utilized at the NRCR and that DOE is obligated to take the fuel from the site for final disposition.

As described in Section 7, "Personnel and Visitor Radiation Exposures," of the NRCR Annual Reports from 2004 through 2009, personnel exposures are well within the limits set by 10 CFR 20.1201, and as low as reasonably achievable (ALARA). The RSO tracks personnel exposures, which are usually less than 0.85 mSv (85 mrem) per year whole body. The WSU ALARA program requires the RSO to investigate any annual personnel exposures greater than 90 mrem deep dose, 940 mrem extremities or 10 mrem fetal dose. Personnel monitors were mounted in locations throughout the controlled access areas of the NRCR, the control room, reactor hall, and beam room. The monitors provide a quarterly measurement of total radiation exposures at those locations. These dosimeters typically measure annual doses of less than 0.5 mSv (50 mrem) in the control room and less than 2 mSv (200 mrem) in the reactor hall and beam room. The above information is based on the NRC staff's review of the past five years of radiation exposure data as monitored by the licensee using NVLAP-approved and processed dosimetry. No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of the proposed action.

The licensee conducts an environmental monitoring program to record and track the radiological impact of NRCR operation on the surrounding unrestricted area. The program consists of quarterly exposure measurements at 12 locations adjacent to the Nuclear Radiation Center and at 24 control locations away from any direct influence from the reactor. The RSO administers the program and maintains the appropriate records. Over the past five years, the survey program indicated that radiation exposures at the monitoring locations were not significantly higher than those measured at the control locations. Year-to-year trends in exposures are consistent between monitoring locations. Also, no correlation exists between total annual reactor operation and annual exposures measured at the monitoring locations. Based on the NRC staff's review of the past five years of data, the NRC staff concludes that operation of the NRCR does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect offsite radiation levels are expected as a result of license renewal.

Environmental Effects of Accidents

Accident scenarios are discussed in Chapter 13 of the NRCR SAR. The maximum hypothetical accident (MHA) is the uncontrolled release of the gaseous fission products contained in

the gap between the fuel and the fuel cladding in one fuel element in the reactor building and into the environment. The licensee conservatively calculated doses to NRCR personnel and the maximum potential dose to a member of the general public. The NRC staff performed independent calculations to verify that the doses represent conservative estimates for the MHA. Occupational doses resulting from this accident would be well below the 10 CFR Part 20 limit of 50 mSv (5,000 mrem). Maximum doses for members of the general public resulting from this accident would be well below the 10 CFR Part 20 limit of 1 mSv (100 mrem). The proposed action will not increase the probability or consequences of accidents.

*II. Non-Radiological Impacts*

The NRCR core is cooled by a light water primary system consisting of the reactor pool, a heat removal system, and an evaporative cooling system. Cooling occurs by natural convection, with the heated coolant rising out of the core and into the bulk pool water. The heated coolant is dissipated by using a heat exchanger and an evaporative induced draft cooling tower located on the north side of the NRCR. Higher pressure is maintained on the secondary side of the heat exchanger so that, in case of the failure of the heat exchanger, coolant would flow back into the pool. The cooling tower transfers heat to the atmosphere by evaporation, an average of 120,000 liters (32,000 gallons) per month. A minor amount of heat removal occurs due to evaporation (5,000 liters (1,330 gallons) per month) of coolant from the reactor pool's surface. Replacement water is pumped from dedicated wells not associated with the municipal well water system of Pullman, Washington. Coolant leakage from the primary pump or the heat exchanger is diverted to a hold up tank for analysis, dilution, and transfer to the sanitary sewer.

Release of thermal effluents from the NRCR will not have a significant effect on the environment. According to the licensee, Washington State University maintains and complies with the appropriate Washington Department of Health permit for secondary water discharge. Given that the proposed action does not involve any change in the operation of the reactor and the heat load dissipated to the environment, the NRC staff concludes that the proposed action will not have a significant impact on the local water supply.

National Environmental Policy Act (NEPA) Considerations

The NRC has responsibilities that are derived from NEPA and from other environmental laws, which include the Endangered Species Act (ESA), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act (FWCA), and Executive Order 12898 Environmental Justice. The following provides a brief discussion of impacts associated with these laws and other requirements.

I. Endangered Species Act

No effects on the terrestrial or aquatic habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act would be expected.

II. Coastal Zone Management Act

The NRCR is not located within any managed coastal zones, nor would NRCR effluents and emissions impact any managed coastal zones.

III. National Historic Preservation Act

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. The National Register of Historic Places (NRHP) lists 9 historic sites located in and around Pullman, Washington with two of the sites on the WSU main campus. None of the sites are located within 0.8 kilometers (0.5 miles) of the NRCR and all are to the west of the NRCR except one site to the south. Given the distance between the NRCR and the 9 historical sites listed in the NRHP, continued operation of the NRCR will not impact any historical sites. Based on this information, the NRC staff finds that the potential impacts of license renewal would have no adverse effect on historic and archaeological resources.

IV. Fish and Wildlife Coordination Act

The licensee is not planning any water resource development projects, including any modifications related to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage.

V. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the NRCR. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing around the NRCR, and all are exposed to the same health and environmental effects generated from activities at the NRCR.

Minority Populations in the Vicinity of the NRCR—According to 2000 census data, 9.5 percent of the population (approximately 159,000 individuals) residing within a 50-mile radius of the NRCR identified themselves as minority individuals. There are 14 counties that fall entirely or partly within the 50-mile radius, seven in Washington and seven in Idaho. The largest minority was American Indian (5,800 persons or 3.6 percent), followed by Asian (4,300 persons or 2.7 percent). For Whitman County, (where the NRCR is located), the 2000 Census data shows that about 13.3 percent of the population identified themselves as minorities, with persons of Asian origin comprising the largest minority group (6.6 percent). According to American Community Survey 3-year average census data estimates for 2006–2008, the minority population of Whitman County, as a percent of the total population, had increased to 16.6 percent.

Low-income Populations in the Vicinity of the NRCR—According to 2000 Census data, approximately 3,700 families and 25,000 individuals (approximately 9.6 and 15.7 percent, respectively) residing within a 50-mile radius of the NRCR were identified as living below the Federal poverty threshold in 1999. The 1999 Federal poverty threshold was $17,029 for a family of four.

According to American Community Survey 3-year average census data estimates for 2006–2008, the median household income for Washington was $57,234, while 11.6 percent of the state population and 7.9 percent of families were determined to be living below the Federal poverty threshold. Whitman County had a lower median household income average ($35,945) and higher percentages (25.1 percent) of individuals and families (9.0 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects, however, radiation doses from continued operations associated with this license renewal are expected to continue at current levels, and would be well below regulatory limits.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the NRC

staff finds that the proposed action would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of NRCR.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC staff considered denying the proposed action. If the NRC denied the application for license renewal, reactor operations would cease and decommissioning would be required. The NRC notes that, even with a renewed license, the NRCR will eventually be decommissioned, at which time the environmental effects of decommissioning would occur. Decommissioning would be conducted in accordance with an NRC-approved decommissioning plan which would require a separate environmental review under 10 CFR 51.21. Cessation of reactor operations would reduce or eliminate radioactive effluents and emissions. However, as previously discussed in this environmental assessment, radioactive effluents and emissions from reactor operations constitute a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and the denial of the application for license renewal would be similar. In addition, denying the application for license renewal would eliminate the benefits of teaching opportunities, research, and services provided by the NRCR.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Amendment No. 10 to Facility Operating License No. R–76 for the Washington State University Nuclear Research Center Reactor dated August 11, 1982, which renewed the Facility Operating License for a period of 20 years.

**Agencies and Persons Consulted**

In accordance with the agency's stated policy, the staff consulted with the State Historic Preservation Officer between May 13 and October 21, 2010, and the State Liaison Officer between May 13 and December 2, 2010, regarding the environmental impact of the proposed action. The consultation involved a thorough explanation of the environmental review, the details of this environmental assessment, and the NRC's findings. The State officials stated that they understood the NRC review and had no comments regarding the proposed action.

*III. Finding of No Significant Impact*

On the basis of the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated June 24, 2002 (ML092390202), as supplemented by letters dated August 15, 2007 (ML072410493), June 13, 2008 (ML082380266), and April 7, 2010 (ML101031097). 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 Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 8th day of April, 2011.

For the Nuclear Regulatory Commission.

**Jessie F. Quichocho,**

*Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–9436 Filed 4–18–11; 8:45 am]

BILLING CODE 7590–01–P

## RAILROAD RETIREMENT BOARD

### Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on April 27, 2011, 10 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

**Executive Committee Reports**

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: April 14, 2011.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 2011–9537 Filed 4–15–11; 11:15 am]

BILLING CODE 7905–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Requested Change:

Form 10–K, OMB Control No. 3235–0063; SEC File No. 270–48.

Form 20–F, OMB Control No. 3235–0288; SEC File No. 270–156.

Section 989G of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 [1] (the "Act") provides that Section 404(b) of the Sarbanes-Oxley Act [2] does not apply to any audit report prepared for an issuer that is neither an accelerated filer nor a large accelerated filer as defined in Rule 12b–2 [3] under the Securities Exchange Act.[4] Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget the request for approval of extension of the previously approved collection of information discussed below.

In a separate release,[5] the Commission amended its rules in light of the Act, which amends Section 404 of the Sarbanes-Oxley Act. The Commission had previously estimated the burden of complying with Section 404(b) of the Sarbanes-Oxley Act assuming that all filers of Forms 10–K and 20–F would file an auditor's attestation report. The filers that were included in the estimate but are no longer subject to the 404 requirement are sometimes referred to as "non-accelerated filers."

Form 10–K sets forth the disclosure requirements for annual reports filed by issuers under the Securities Exchange Act. Form 20–F sets forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers under the Securities Exchange Act, as well as many of the

[1] Public Law 111–203 (July 21, 2010).

[2] 15 U.S.C. 7262.

[3] 17 CFR 240.12b–2.

[4] 15 U.S.C. 78a *et seq.*

[5] Release No. 33–9142 (Sept. 15, 2010) [75 FR 57385].

disclosure requirements for registration statements filed by foreign private issuers under the Securities Act.

Based on the number of non-accelerated filers that filed an annual report in 2009, we estimate that approximately 4,400 annual reports on Form 10–K and approximately 285 annual reports on Form 20–F are filed annually by non-accelerated filers. The current burden estimates for Form 10–K and Form 20–F attribute 0.5 burden hours per issuer for filing the auditor attestation report, including the burden attributed to the related disclosure in the annual report, and do not include any burden attributed to the audit work.[6] Consistent with the burden estimates for these forms, that estimate is then split 75% and 25% between internal staff and external professionals for Form 10–K, and 25% and 75% between internal staff and external professionals for Form 20–F. Both estimates assume an hourly rate of $400 for external professionals. Accordingly, we are reducing the aggregate burden estimate by 1,650 hours of internal staff time and $220,000 for external professional services for Form 10–K, and 36 hours of internal staff time and $42,750 for external professional services for Form 20–F.

The information collections requirements related to Forms 10–K and 20–F are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed is made publicly available on the EDGAR filing system. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *http: www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) 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.* Comments must be submitted to OMB within 30 days of this notice.

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.*

April 11, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–9414 Filed 4–18–11; 8:45 am]

**BILLING CODE 8011–01–P**

[6] For further information on the determination of our estimates, *see* Release No. 33–8238 (June 5, 2003) [68 FR 36636].

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64226A; File No. SR–FINRA–2011–005]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Promissory Note Proceedings; Correction

April 13, 2011.

### Need for Correction

In FR Document No. 2011–8897 beginning on page 20741 as published on Wednesday, April 13, 2011, the Commission issued Release No. 34–64226, an order approving the proposed rule change by the Financial Industry Regulatory Authority, Inc. ("FINRA") to amend Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code"). Commission staff discovered that a statement in the introduction section of that order mischaracterized the nature of the rule change which was described accurately in the remainder of the order. The staff believes this mischaracterization was the result of an editing error.

This correction does not substantively amend the Commission's approval order. The sole purpose of this correction is to rectify the error in the introduction section and alleviate any potential confusion. The introduction section of this approval order is being republished with the correction.

### Correction of Publication

Accordingly, the Introduction of the approval order is republished to correct a statement therein, as follows:

*I. Introduction*

On February 4, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of a chair-qualified public arbitrator also qualified to resolve a statutory discrimination claim. The proposed rule change was published for comment in the **Federal Register** on February 22, 2011.[3] The Commission did not receive any comments on the proposal. This order approves the proposed change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–9413 Filed 4–18–11; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 63909 (February 15, 2011), 76 FR 9838 (February 22, 2011) ("Notice").

[4] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64299; File No. SR–NYSE–2011–14]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Alter Listing Fees Applicable to Debt Securities and Structured Products

April 14, 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 April 11, 2011, the 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 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 Section 902.08 of the Listed Company Manual (the "Manual") to alter its listing fees applicable to debt securities and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

structured products. The text of the proposed rule change is available at the Exchange's principle office, the Commission's Public Reference Room, and *http://www.nyse.com,* and on the Commission's Web site at *http://www.sec.gov.*

## 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section 902.08 of the Manual to alter its listing fees applicable to debt securities and structured products. This filing does not amend the listing fees applicable to equity securities of operating companies.

The Exchange currently applies the fee schedule set forth in Section 902.08 to all securities (including short-term securities) that list under the debt standard in Section 703.19 [3] and trade on NYSE Bonds ("Affected Products"). Under the current Rule, listed companies and their affiliates pay a flat $15,000 for Affected Products and such Affected Products are not assessed annual fees. Effective July 1, 2011 and thereafter, the Exchange proposes to amend Section 902.08 to (i) reduce the initial listing fee for Affected Products from $15,000 to $5,000 and (ii) impose an annual fee of $5,000 for Affected Products.[4] Issuers who have paid the initial listing fee of $15,000 prior to July 1, 2011 shall receive a waiver of the annual fees imposed under the amended Rule until January 1, 2014 in order to provide a more equitable allocation of fees among such issuers before and after the fee change.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

Although the initial listing fee would decline, the Exchange anticipates that the proposed addition of annual fees would increase the overall fees it would collect from issuers of Affected Products over time. The Exchange believes that moving from a one-time listing fee to a lower initial listing fee coupled with ongoing annual fees will help to better align the Exchange's revenues and costs over the span of the listing. The proposed increases in total fees associated with Affected Products would support the increased costs incurred by the Exchange for the rulemaking process, ongoing listing administration processes, issuer services, and consultative services provided to these issuers. In addition, higher fees for Affected Products reflect the greater resources the Exchange would expend to provide additional services in connection with the listing and administration of these securities and would align the cost of Affected Products with those fees charged for other debt securities eligible to trade on the NYSE bond platform, which also have an initial listing fee of $5,000 and annual fee of $5,000. Moreover, the waiver of annual fees for issuers that previously paid the higher $15,000 initial listing fee would more equitably allocate overall fees among issuers of such securities and provide a fair transition to the new fee structure.

### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f)(2) of Rule 19b–4 thereunder,[9] because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–14 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–2011–14. 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

[3] The general categories of securities that are currently listed under Section 703.19 are: (1) Capital securities; (2) retail debt securities; (3) mandatory convertible securities; and (4) repackaged securities.

[4] For Affected Products listed on or after July 1, 2011, such issuers will pay a pro-rated annual fee for 2011.

[5] The Exchange believes that the proposed fee structure and three year waiver provides a fair allocation of fees and an appropriate transition period for issuers. For example, an issuer that paid the initial listing fee of $15,000 on January 1, 2011 will not be assessed an annual fee of $5,000 until January 1, 2014. Thus, as of that date, such issuer will have paid in total $20,000 for listing the Affected Product on the Exchange (the initial listing fee of $15,000 plus the $5,000 annual fee paid on January 1, 2014). An issuer that lists an Affected Product on January 1, 2012 will pay $10,000 in 2012 (a $5,000 initial listing fee and a $5,000 annual fee), a $5,000 annual fee on January 1, 2013, and a $5,000 annual fee on January 1, 2014. Thus, as of January 1, 2014, such issuer also will have paid in total $20,000 for listing the Affected Product on the Exchange.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–14 and should be submitted on or before May 10, 2011

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–9432 Filed 4–18–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64296; File No. SR–ISE2011–20]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

April 13, 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 April 8, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*"), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange currently assesses a per contract transaction charge to market participants that add or remove liquidity from the Exchange ("maker/taker fees") in 100 options classes (the "Select Symbols").[3] The purpose of this proposed rule change is to amend the list of Select Symbols on the Exchange's Schedule of Fees, titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols." Specifically, the Exchange proposes to change the symbol from "QQQQ" to "QQQ" to reflect the recent change in that exchange-traded fund's ticker symbol. "QQQQ" would continue to be subject to the Fees and Rebates for Adding and Removing Liquidity on the Exchange's Schedule of Fees.

Additionally, the Exchange proposes to remove Motorala, Inc. ("MOT") from the list of Select Symbols on the Exchange's Schedule of Fees due to a recent corporate action. As a result, MOT is no longer a valid symbol.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that updating its Schedule of Fees to amend the "QQQQ" symbol to "QQQ" will provide its members clarity as to which symbols are subject to the Exchange's maker/taker fees. The Exchange further believes that this proposed rule change is both equitable and reasonable because the amendments would uniformly apply to all categories of market participants. The Exchange further believes that the proposed removal of MOT from the list of Select Symbols is both equitable and reasonable because the amendment would uniformly apply to all categories of participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml* or
- Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR-ISE–2011–20 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–20. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE–2011–20 and should be submitted by May 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–9438 Filed 4–18–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before June 20, 2011.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joan Elliston, Program Analyst, Office of Business Development, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Joan Elliston, Program Analyst, Office of Business Development 202–205–7190, *joan.elliston@sba.gov*. Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

**SUPPLEMENTARY INFORMATION:** The respondents are 8(a) Business Development (BD) program participants. Under 15 U.S.C. 637(a)(20)(A), representatives from small business concerns participating in the 8(a) BD program are required to report the following to their assigned Business Development Specialist semiannually: A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant. (ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

*Title:* "Representatives Used and Compensation Paid for Services in Connection with Obtaining Federal Contracts ".

*Description of Respondents:* Representatives of 8(a) Business Development program firms.

*Form Number:* 1790.

*Annual Responses:* 14,280.

*Annual Burden:* 3,570.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 2011–9443 Filed 4–18–11; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12503 and #12504]**

### Hawaii Disaster #HI–00022

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment to the Administrative declaration of a disaster for the State of Hawaii dated 03/29/2011.

*Incident:* Honshu Tsunami.

*Incident Period:* 03/11/2011.

*Effective Date:* 04/11/2011.

*Physical Loan Application Deadline Date:* 05/31/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/29/2011.

**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 Hawaii, dated 03/29/2011, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Maui.

*Contiguous Counties:* Kalawao.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 11, 2011.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2011–9390 Filed 4–18–11; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12526 and #12527]**

### Hawaii Disaster #HI–00023

**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 Hawaii (FEMA–1967–DR), dated 04/08/2011.

*Incident:* Tsunami Waves.

*Incident Period:* 03/11/2011.

*Effective Date:* 04/08/2011.

*Physical Loan Application Deadline Date:* 06/07/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/09/2012.

**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 04/08/2011, 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:* Hawaii Honolulu Maui.

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 12526E and for economic injury is 12527E.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Joseph P. Loddo,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–9388 Filed 4–18–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12501 and #12502]**

### Missouri Disaster Number MO–00047

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of 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:* 04/11/2011.

*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:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Missouri, dated 03/23/2011, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Camden.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Joseph P. Loddo,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–9445 Filed 4–18–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[License No. 09/79–0454]**

### Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity financing to InsideView Technologies, Inc., 444 DeHaro Street, Suite 210, San Francisco, CA 94107 ("InsideView"). The financing is contemplated for general operating purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., Associates of Emergence Capital Partners SBIC, L.P., own in aggregate more than ten percent of InsideView. Therefore, InsideView is considered an Associate of Emergence Capital Partners SBIC, L.P. and the transaction is considered as financing an Associate, requiring prior written exemption from SBA.

Notice is hereby given that any interested person may submit written comments on the transaction on or before May 4, 2011 to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: April 7, 2011.

**Sean Greene,**

*Associate Administrator for Investment.*

[FR Doc. 2011–9102 Filed 4–18–11; 8:45 am]

**BILLING CODE M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee—New Task

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

**SUMMARY:** The FAA assigned the Aviation Rulemaking Advisory Committee (ARAC) a new task to provide advice and recommendations to the FAA about how to prioritize rulemaking projects. This task addresses, in part, one of the Department of Transportation's Future of Aviation Advisory Committee (FAAC) recommendations. This notice informs the public of a new ARAC activity and solicits membership for the new Rulemaking Prioritization Working Group.

**FOR FURTHER INFORMATION CONTACT:** Katherine Haley, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202–493–5708, facsimile: 202–267–5075; e-mail: *Katherine.L.Haley@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The FAA established ARAC to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities. ARAC's objectives are to improve the development of the FAA's regulations by providing

information, advice, and recommendations related to aviation issues.

On April 16, 2010, the Secretary of the Department of Transportation established the Future of Aviation Advisory Committee (FAAC) to provide information, advice and recommendations to ensure the competitiveness of the United States aviation industry and its capability to address the evolving transportation needs, challenges and opportunities of the United States and global economies. As a result, the FAAC developed 23 recommendations which were submitted on December 15, 2010. The Rulemaking Prioritization Working Group will specifically address, in part, Recommendation #22: "The Secretary should quickly review the existing regulatory and safety initiative calendar and provide parameters and criteria for the FAA to prioritize its current and future rulemaking program. This review should include industry, or at a minimum seek industry input, and the results should be made publicly available * * *."

The objective of the Rulemaking Prioritization Working Group is to provide advice and recommendations on developing a framework and methodologies to assist the FAA in assessing and sequencing potential rulemaking projects. The FAA will provide the Rulemaking Prioritization Working Group with a subset of issues to test the prototype. These issues are potential rulemaking projects from the FAA's four-year regulatory look-ahead.

When developing the prototype, the working group should review models and methodologies as references, including the Commercial Aviation Safety Team (CAST) methodology. In 1998, the FAA founded the CAST to develop an integrated, data-driven strategy to reduce the commercial aviation fatality risk in the United States and promote new government and industry safety initiatives throughout the world. The CAST methodology identifies top safety areas through the analysis of accident and incident data.

The working group should use the CAST methodology as a reference and not limit the criteria to safety. While safety is a critical factor, the working group should consider all drivers that influence the need to consider rulemaking; e.g., safety, capacity, cost, environmental impacts, harmonization, operations, and other needs.

The March 2011 ARAC Executive Committee meeting included a presentation of solicited ideas and proposed actions for the Executive Committee members to consider. This notice advises the public that the FAA has assigned, and the Executive Committee has accepted, a task to develop a report including recommendations on how to prioritize rulemaking projects.

**The Task**

The FAA has tasked the ARAC working group to provide advice and recommendations on developing a framework and methodologies to assist the FAA in assessing and sequencing potential rulemaking projects.

The working group is expected to develop a report containing recommendations on how the agency should prioritize rulemaking projects. This report should document both majority and minority positions on the findings and the rationale for each position. Any disagreements should be documented, including the rationale for each position and the reasons for the disagreement. In developing its recommendations, the working group shall:

1. Review FAAC Recommendation #22, which can be found at *http://www.dot.gov/faac/FAAC_Recommendations.pdf.*

2. Define a process to evaluate rulemaking projects.

3. Evaluate and consider the parameters and criteria of the risk assessment methodology, ensuring the most effective project receives the highest priority. This includes considering all drivers of rulemaking; e.g., safety, capacity, cost, environmental impacts, harmonization, operations, and other needs.

4. Explore models and/or methodologies that would be helpful in developing the risk assessment methodology. This includes reviewing the CAST methodology, which can be found at *http://www.cast-safety.org/index.cfm.*

5. Develop a classification system to rank rulemaking projects.

6. Develop a model to use as a prototype and test it with the subset of issues the FAA provides.

7. Consider ARAC's role after the FAA implements the rulemaking prioritization methodology.

*Schedule:* The recommendations must be forwarded to the ARAC Executive Committee for review and approval no later than December 2011. The working group may be assigned additional tasks leading to implementation of parameters and criteria that will assist the FAA in prioritizing its rulemaking program by December 2012.

**ARAC Acceptance of Task**

The ARAC Executive Committee has accepted the task and assigned it to the Rulemaking Prioritization Working Group. The working group serves as staff to ARAC and assists in the analysis of the assigned task. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will send them to the FAA.

**Working Group Activity**

The Rulemaking Prioritization Working Group must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the next ARAC Executive Committee meeting held following publication of this notice.

2. Provide a status report at each meeting of the ARAC Executive Committee.

3. Draft the recommendation report and required analyses and/or any other related materials or documents.

4. Present the final recommendations to the ARAC Executive Committee for review and approval.

**Participation in the Working Group**

The Rulemaking Prioritization Working Group will be comprised of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee. The FAA would like a wide range of members to ensure all aspects of rulemaking are considered in development of the recommendations.

If you wish to become a member of the Rulemaking Prioritization Working Group, write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire. Describe your interest in the task and state the expertise you would bring to the working group. We must receive all requests by May 9, 2011. The Executive Committee and the FAA will review the requests and advise you whether or not your request is approved.

If you are chosen for membership on the working group, you must actively participate in the working group by attending all meetings, and providing written comments when requested to do so. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management chain and those you may represent advised of working group activities and decisions

to ensure the proposed technical solutions do not conflict with your sponsoring organization's position when the subject is presented to ARAC for approval. Once the working group has begun deliberations, members will not be added or substituted without the approval of the FAA and the working group chair.

The Secretary of Transportation determined the formation and use of ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

ARAC meetings are open to the public. However, ARAC Rulemaking Prioritization Working Group meetings are not open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on April 13, 2011.

**Pamela Hamilton-Powell,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 2011–9399 Filed 4–18–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Prepare an Environmental Assessment and Request for Public Scoping Comments for the Air Tour Management Plan Program at Big Cypress National Preserve

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Prepare an Environmental Assessment and to Request Public Scoping Comments.

**SUMMARY:** The FAA, with National Park Service (NPS) as a cooperating agency, has initiated development of an Air Tour Management Plan (ATMP) for Big Cypress National Preserve (Big Cypress), pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181) and its implementing regulations (14 CFR Part 136, Subpart B, *National Parks Air Tour Management*). The objective of the ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations on the natural resources, cultural resources, and visitor experiences of a national park unit and any tribal lands within or abutting the park. It should be noted that the ATMP has no authorization over other non-air-tour operations such as military and general aviation operations.In compliance with the National Environmental Policy Act of 1969 (NEPA) and FAA Order 1050.1E, an Environmental Assessment (EA) is being prepared.

The FAA and NPS are now inviting the public, agencies, tribes, and other interested parties to provide comments, suggestions, and input on the scope of issues to be addressed in the environmental process.

**DATES:** By this notice, the FAA as lead agency is requesting comments on the scope of the EA for the ATMP at Big Cypress. Comments must be submitted by May 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Keith Lusk—Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3808. Street address: 15000 Aviation Boulevard, Lawndale, California 90261.

Written comments on the scope of the EA should be submitted electronically via the electronic public comment form on the NPS Planning, Environment and Public Comment System at: *http://parkplanning.nps.gov/BICY_ATMP,*or sent to the mailing address above.

**SUPPLEMENTARY INFORMATION:** A public scoping packet that describes the project in greater detail is available at:

- *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/park_specific_plans/big_cypress.cfm*
- *http://parkplanning.nps.gov/BICY_ATMP*

*Notice Regarding FOIA:* Individuals may request that their name and/or address be withheld from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comment. Commenters using the website can make such a request by checking the box "keep my contact information private." Such requests will be honored to the extent allowable by law, but you should be aware that pursuant to the Freedom of Information Act, your name and address may be disclosed. We will make all submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Issued in Hawthorne, CA, on April 12, 2011.

**Keith Lusk,**

*Program Manager, Special Programs Staff, Western-Pacific Region.*

[FR Doc. 2011–9402 Filed 4–18–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Potential Environmental Impacts of the Proposed Runway 13 Extension and Associated Actions for the Devils Lake Regional Airport in Devils Lake, ND

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

**ACTION:** Notice of availability of a final EA and FONSI/ROD for the evaluation of the potential environmental impacts associated with the proposed Runway 13 extension and associated actions for Devils Lake Regional Airport in Devils Lake, North Dakota.

**SUMMARY:** The FAA has issued the final EA and FONSI/ROD for the proposed Runway 13 extension and associated actions for Devils Lake Regional Airport. The EA was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, FAA Orders 1050.1E, "Environmental Impacts: Policies and Procedures" and FAA Order 5050.4B, "NEPA Implementing Instructions for Airport Actions".

*Point of Contact:* Ms. Patricia Dressler, Environmental Protection Specialist, FAA Bismarck Airports District Office (ADO), 2301 University Drive, Building 23B, Bismarck, North Dakota, 58504. Telephone number (701) 323–7380.

**SUPPLEMENTARY INFORMATION:** The FAA is issuing a final EA and FONSI/ROD that evaluated the potential environmental impacts associated with the proposed runway extension and associated actions at Devils Lake Regional Airport located in Devils Lake, North Dakota. Based on the analysis contained in the final EA, the FAA has determined the selected alternative has no associated significant impacts to resources identified in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures and FAA Order 5054.4B, National Environmental Policy Act Implementing Instructions for Airport Actions. Therefore, no environmental impact statement will be prepared. The runway extension project is needed to enhance the utility and safety of the Devils Lake Regional Airport for current and projected levels of aviation by the design aircraft family.

Eight alternatives were studied for meeting the purpose and need. Four of the eight alternatives (including new location) were reviewed, analyzed, discarded due to the degree of environmental impacts and not meeting

purpose and need. A detailed discussion is in the FONSI/ROD Section entitled *V. Alternatives Considered and Discarded.* The selected alternative is one of four considered in the final EA. The selected alternative consists of addressing the identified needs.

The selected alternative includes the: (1) Unconditional approval of the Airport Layout Plan (ALP) for the development listed in the EA and the decision document. (2) Issue final airspace determinations for the development listed on the ALP. (3) Eligibility for Federal grants-in-aid funds for eligible items. (4) Approval for the development or revision, implementation, and use of air traffic/flight procedures to implement the proposed action. (5) FAA finding of "No Historic Properties Affected" for the Proposed Action. (6) FAA finding of "No Effect" to the endangered species gray wolves and finding of "may affect, not likely to adversely affect" the endangered species whooping cranes. (7) FAA floodplain finding that there is no prudent and practicable alternative to this impact and the propose action includes all practicable measures to minimize harm to floodplains. (8) FAA wetland finding that there is no practicable alternatives to such construction and the proposed action includes all practicable measure to minimize harm to wetlands. (9) FAA DOT Section 4(f) De Minimis Impact Findings on wetland properties. (10) Appropriate permits and mitigation will be needed before disbursing Federal funds.

These documents will be available for public review during normal business hours at:

Federal Aviation Administration Bismarck ADO, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504.

Devils Lake Regional Airport, 106 National Guard Street, Devils Lake, North Dakota 58301.

Ramsey County Auditors Office, 524 4th Avenue, NE, Unit 6, Devils Lake, North Dakota 58301.

Devils Lake City Hall, 423 6th Street, NE., Devils Lake, North Dakota 58302.

Lake Region Public Library, 423 7th Street, NE., Devils Lake, North Dakota, 58301.

Issued in Bismarck, North Dakota, April 7, 2011.

**Thomas T. Schauer,**

*Manager, Bismarck Airport District Office FAA, Great Lakes Region.*

[FR Doc. 2011–9227 Filed 4–18–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review; Lambert-St. Louis International Airport, St. Louis, MO

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the St. Louis Airport Authority for the Lambert-St. Louis International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 Code of Federal Regulations (CFR) Part 150 (hereinafter referred to as "Part 150") are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Lambert-St. Louis International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 2, 2011.

**DATES:** The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is April 5, 2011. The public comment period ends June 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** FAA, Todd Madison, ACE–611B, 901 Locust, Kansas City, Missouri, 64106–2325, *todd.madison@faa.gov*, 816–329–2640. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces the FAA finds that the noise exposure maps submitted for the Lambert-St. Louis International Airport are in compliance with applicable requirements of Part 150, effective April 5, 2011. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 2, 2011. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47503 of the Act, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The St. Louis Airport Authority submitted to the FAA on December 23, 2010, noise exposure maps, descriptions and other documentation that were produced during the "2010 Update to 14 CFR Part 150 Noise Exposure Maps and Noise Compatibility Program." It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, 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.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the St. Louis Airport Authority. The specific documentation determined to constitute the noise exposure maps includes: Current Noise Exposure Map (2010) as shown on Exhibit NEM–1, Future Noise Exposure Map/Noise Compatibility Program Map (2015) as shown on Exhibit NEM–2, and the associated supporting report, "14 CFR Part 150 Noise Exposure Map Update and Noise Compatibility Program Update," which contains all other narrative, graphic, or tabular representations of the data as required by section A150.101 of Part 150, and sections 47503 and 47506 of the Act. The FAA has determined that these maps for the Lambert-St. Louis International Airport are in compliance with applicable requirements. This determination is effective on April 5, 2011. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours

depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Lambert-St. Louis International Airport, also effective on April 5, 2011. 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 October 2, 2011.

The FAA's detailed evaluation will be conducted under the provisions of section 150.33 of Part 150. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be 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 relevant comments, 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, Central Region Airports Division, 901 Locust, Kansas City, Missouri 64106–2325, from 7:30 a.m. to 4 p.m.

Jan Titus, St. Louis Airport Authority, Lambert-St. Louis International Airport, Airport Planning & Development, 11495 Navaid Road, Bridgeton, Missouri 63044, from 8 a.m. to 5 p.m.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, Missouri, April 5, 2011.

**Jim A. Johnson,**

*Manager, Central Region Airports Division.*

[FR Doc. 2011–9382 Filed 4–18–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in Indiana

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA and United States Army Corps of Engineers (USACE), DoD.

**SUMMARY:** This notice announces actions taken by the FHWA and the USACE that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to proposed highway projects for a 28.7 mile segment of I–69 in the Counties of Gibson, Pike and Daviess, State of Indiana, and grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency actions that are covered by this notice will be barred unless the claim is filed on or before October 16, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then the shorter time period applies.

**FOR FURTHER INFORMATION CONTACT:** For the FHWA: Ms. Michelle Allen, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, Indianapolis, IN 46204–1576; telephone: (317) 226–7344; e-mail: *Michelle.Allen@dot.gov.* The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4 p.m., e.t. For the USACE: Mr. Greg McKay, Chief, North Section Regulatory Branch, Louisville District, United States Army Corps of Engineers, P.O. Box 59, Louisville, KY 40201–0059; telephone: (502) 315–6685; e-mail: *gregory.a.mckay@usace.army.mil.* Normal business hours are 8 a.m. to 5 p.m., e.t. You may also contact Mr. Thomas Seeman, Project Manager, Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Indianapolis, IN 46204; telephone: (317) 232–5336; e-mail: *TSeeman@indot.IN.gov.* Normal business hours for the Indiana Department of Transportation are: 8 a.m. to 4:30 p.m., e.t.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Indiana that are listed below. The actions by the Federal agencies on a project, and the laws under which such actions were taken, are described in the Record of Decision (ROD), Reevaluation Documents to the final environmental impact statements (FEIS) issued in connection with the projects, Section 404 Discharge of Dredged or Fill Material Permit and Regional General Permit letters, and in other documents in the FHWA administrative record for the project. The ROD and other documents from the FHWA administrative record files for the listed projects are available by contacting the FHWA or the Indiana Department of Transportation (INDOT) at the addresses provided above. Project information may also be available through the INDOT I–69 Project Web site at *http://www.i69indyevn.org/.* People unable to access the Web site may contact FHWA or INDOT at the addresses listed above. This notice applies to all Federal agency decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to: 1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]. 2. Endangered Species Act [16 U.S.C. 1531–1544]. 3. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]. 4. Clean Air Act, 42 U.S.C. 7401–7671(q). 5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]. 6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]. 7. Bald and Golden Eagle Protection Act [16 U.S.C. 688–688d]. 8. Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 402, Section 401, Section 319). Previous actions taken by the USFWS for the Tier 1, I–69 project, pursuant to the Endangered Species Act,

16 U.S.C. 1531–1544, included its concurrence with the FHWA's determination that the I–69 project was not likely to adversely affect the eastern fanshell mussel (*Cyprogenia stegaria*) and that the project was likely to adversely affect, but not jeopardize, the bald eagle. The USFWS also concluded that the project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat. These USFWS decisions were described in the Programmatic Biological Opinion issued on December 3, 2003, the Revised Programmatic Biological Opinion issued on August 24, 2006, and other documents in the Tier 1 project records. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on April 17, 2007. A claim seeking judicial review of the Tier 1 decisions must have been filed by October 15, 2007, to avoid being barred under 23 U.S.C. 139(l).

The projects subject to this notice are:

1. *Project:* Section 1 of the I–69 highway project from Evansville to Indianapolis. Location: I–64 just north of Evansville to just north of SR 64 west of Oakland City. Notice is hereby given that, subsequent to the earlier FHWA notice, the FHWA has taken final agency actions within the meaning of 23 U.S.C. 139(*l*)(1) by approving three (3) Reevaluations of the Tier 2, Section 1 Record of Decision issued on December 12, 2007. Section 1 of the I–69 project extends from I–64 just north of Evansville to just north of SR 64 west of Oakland City. Section 1 is a new alignment, fully access-controlled highway. As approved in the Tier 1 ROD, the corridor is generally 2000-feet wide. The ROD selected Preferred Alternative 4 for Section 1, as described in the I–69 Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement, Evansville to Oakland City, Indiana (FEIS), available at *http://www.i69indyevn.org/section1_FEIS.html.* The ROD also approved the locations of the interchanges, grade separations, and access roads (which include new roads, road relocations, and realignments). On February 1, 2008, the FHWA published a "Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI" in the **Federal Register** at (73 FR 6241–01) for the Section 1, 13.1 mile segment of I–69 in the Counties of Warrick and Gibson. A claim seeking judicial review of the Tier 2, Section 1 decisions must have been filed by July 30, 2008, to avoid being barred under 23 U.S.C. 139(l). The three (3) Reevaluations of the Tier 2, Section 1 ROD include: (1) The March 20, 2009 Reevaluation, which was prepared to evaluate the effects of additional right-of-way and improvements (including right-of-way required for bank stabilization, drainage improvements, guard-rail, cul-de-sacs, and a potential levee) made necessary based on final design that were not analyzed in the Tier 2 Section 1 ROD or FEIS (approved December 12, 2007); (2) the December 13, 2010 Reevaluation, which was prepared to evaluate the impacts of additional right-of-way areas (including right-of-way required to accommodate cul-de-sac construction, right-of-way shift to avoid a stream channel, stream channel realignment and tree planting, berm construction around existing oil storage tanks, driveway construction, interchange and grade modifications, and flood easements) made necessary based on final design that were not analyzed in the Tier 2 Section 1 ROD or FEIS (approved December 12, 2007); and (3) the February 17, 2011 Reevaluation, which was prepared to evaluate the impacts of additional right-of-way areas (including right-of-way required to accommodate cul-de-sac construction, building removal, cut sections through hills, driveway reconstruction, interchange modifications, erosion control, fill-in remainder portions of impacted ponds, construction of a connector road, drainage easements, and revised right-of-way to even station and offset) made necessary based on final design that were not analyzed in the Tier 2 Section 1 ROD or FEIS (approved December 12, 2007). The analysis in each of the Reevaluations supports the FHWA's conclusions that none of the changes examined will have impacts sufficient to require preparation of a Supplemental Environmental Impact Statement (SEIS) or an additional Draft Environmental Impact Statement (DEIS) for Section 1, and therefore that the Tier 2 Section 1 FEIS and ROD remain valid. The detailed analysis of the reevaluation documents along with the Federal decision of minimal impact can be found on the project Web site at *http://www.i69indyevn.org/reevaluation.html.*

2. *Project:* Section 2 of the I–69 highway project from Evansville to Indianapolis. Location: Oakland City, Indiana to Washington, Indiana, Gibson, Pike and Daviess Counties. On August 13, 2010, the FHWA published a "Notice of Final Federal Agency Actions on Proposed Highway in Indiana" in the **Federal Register** at (75 FR 49547) for the Section 2, 28.7 mile segment of I–69 in the Counties of Gibson, Pike and Daviess. Notice is hereby given that, subsequent to the earlier FHWA notice, the USACE has taken final agency actions within the meaning of 23 U.S.C. 139(*l*)(1) by issuing permits and approvals for the highway project. The actions by the USACE, related final actions by other Federal agencies, and the laws under which such actions were taken, are described in the USACE decisions and its project records, referenced as Department of the Army (DA) Permit, Number LRL–2010–466. That information is available by contacting the USACE at the address provided above.

On June 18, 2010, INDOT filed an application with the USACE for authorization under Section 404 of the Clean Water Act, 33 U.S.C. 1344, to construct the 28.7 mile Section 2 I–69 project. On April 1, 2011, the USACE took final action in issuing the Department of the Army (DA) Permit for the Section 2 I–69 project, Number LRL–2010–466, as described in the USACE decision and its administrative record for the project. As part of the Section 2 project, which begins at the northern terminus of the Section 1 project, there are 14 crossings of water resources requiring individual permits from the USACE, including streams, open water and emergent, scrub-shrub and forested wetlands. Subject to the permit conditions, INDOT is permitted to discharge 6,432 cubic yards of fill material below the Ordinary Highway Water Mark of 25,075 linear feet of stream channels, and to discharge 638,370 cubic yards of fill material into 16.41 acres of open water and emergent, scrub-shrub, and forested wetlands in constructing these 14 crossings. In addition, in two letters dated July 29, 2010 and September 29, 2010, the USACE has authorized impacts at 48 other sites under their jurisdiction within Section 2 of the I–69 project in Gibson, Pike and Davies Counties via the Regional General Permit No. 1 issued jointly by the Louisville and Chicago Districts on December 15, 2009. In the letter dated July 29, 2010 from Ms. Deborah Duda Snyder of the Indianapolis Regulatory Office of the USACE to Mr. Nathan Saxe of INDOT, the USACE verified that 10 individual stream and wetland impacts are authorized under the Regional General Permit No. 1 issued jointly by the Louisville and Chicago Districts on December 15, 2009. In the letter dated September 29, 2011 from Ms. Deborah Duda Snyder of the Indianapolis Regulatory Office of the USACE to Mr.

Nathan Saxe of INDOT, the USACE verified that an additional 38 individual stream and wetland impacts are authorized under the Regional General Permit No. 1 issued jointly by the Louisville and Chicago Districts on December 15, 2009, subject to special permit conditions requiring compensatory wetland and stream mitigation in accordance with approved "Mitigation and Monitoring Plans."

In addition, FHWA has approved five (5) Reevaluations of the Tier 2, Section 2 Record of Decision issued on August 13, 2010. The five Reevaluations of the Tier 2, Section 2 ROD include: (1) The October 6, 2010 Reevaluation, which was prepared to analyze the impacts of additional right-of-way areas (including right-of-way changes to accommodate storm water detention, elimination and additions of local service roads, cul-de-sac construction, existing bridge upgrades, building removal, mitigation, construction of access roads, spill containment, and to tie into Section 1 right-of-way) made necessary based on final design of segments 1 and 1A of Section 2 that were not analyzed in the Tier 2 Section 2 ROD or FEIS (approved April 18, 2010); (2) the December 6, 2010 Reevaluation, which was prepared to evaluate the impacts of permanent flood easements required for the final design of seventeen waterway bridge crossings within Section 2 and determine the changes in impacts to the affected environment from what was documented in the Tier 2 Section 2 ROD (approved April 18, 2010); (3) the December 8, 2010 Reevaluation, which was prepared to evaluate the impacts of additional right-of-way areas (including right-of-way changes to accommodate cul-de-sac construction, refined curve alignments, construction of local service roads to access landlocked parcels, and right-of-way revisions to follow surveyed parcel lines) in segments 2 and 3 of Section 2 made necessary based on final design that were not analyzed in the Tier 2 Section 2 ROD or FEIS; (4) the January 6, 2011 Reevaluation, which was prepared to analyze the impacts of additional right-of-way areas (including right-of-way changes to accommodate transmission tower relocation, connection highway right-of-way into existing right-of-way, removal of existing pavement, intersection realignment for improved safety, cul-de-sac construction, access drive construction, local service roads modifications, and improvements in sight distance) made necessary based on final design of segments 4 and 5 of Section 2 that were not analyzed in the Tier 2 Section 2 ROD or FEIS (approved April 18, 2010); and (5) the January 13, 2011 Reevaluation, which was prepared to evaluate the impacts of minor right-of-way changes (including right-of-way changes to accommodate cul-de-sac construction, right-of-way shift to avoid a stream channel, side slope and ditching design to stay within right-of-way, construction of access drives and roadway profile changes, filling in the small remainder of an impacted pond, building removal, Local Service road modifications, right-of-way revisions to follow surveyed parcel lines, improvements to intersection sight distance, and right-of-way revisions to simplify acquisition and traffic maintenance) made necessary as a result of final design of segments 6 and 7 of Section 2 that were not analyzed in the Tier 2 Section 2 ROD or FEIS (approved April 18, 2010). The analysis completed in each of the five Reevaluations supports the FHWA's conclusions that none of the changes examined will have impacts sufficient to require preparation of a Supplemental Environmental Impact Statement (SEIS) or an additional Draft Environmental Impact Statement (DEIS) for Section 2, and therefore that the Tier 2 Section 2 FEIS and ROD remain valid. The detailed analysis of the reevaluation documents along with the federal decision of minimal impact can be found on the project Web site at *http://www.i69indyevn.org/reevaluation.html.*

3. *Project:* Section 3 of the I–69 highway project from Evansville to Indianapolis. Location: U.S. 50 east of the city of Washington, Indiana to U.S. 231 near the Crane NSWC, Daviess and Greene Counties. Notice is hereby given that the FHWA has approved two (2) Reevaluations of the Tier 2, Section 3 Record of Decision issued on January 28, 2010. Section 3 of the I–69 project extends from U.S. 50 east of the city of Washington, Indiana to U.S. 231 near the Crane NSWC. Section 3 is a new alignment, fully access-controlled highway. As approved in the Tier 1 ROD, the corridor is generally 2000-feet wide. The corridor width varies at two locations within Section 3. It narrows to 1200-feet wide near First Creek and expands to 6400-feet wide near the Thousand Acre Woods. The ROD selected Refined Preferred Alternative 1 for Section 3, as described in the I–69 Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement, Washington to Crane NSWC, Indiana (FEIS), available at *http://www.i69indyevn.org/section3_FEIS.html.* The ROD also approved the locations of the interchanges, grade separations, and access roads (which include new roads, road relocations, and realignments). A Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI, was published in the **Federal Register** on February 25, 2010 (75 FR 8786–01). A claim seeking judicial review of the Tier 2, Section 3 decisions must have been filed by August 24, 2010, to avoid being barred under 23 U.S.C. 139(l). The two (2) Reevaluations of the Tier 2, Section 3 ROD include: (1) The September 29, 2010 Reevaluation, which was prepared to evaluate the impacts of additional right-of-way areas (including right-of-way changes to accommodate residential relocation, channel grading as part of hydraulic design, natural channel design, stream relocation of a Doan's Creek tributary, barn removal, bridge upgrades, tie-in to existing right-of-way, and driveway reconstruction) made necessary as a result of final design of segments 10 through 13 of Section 3 that were not analyzed in the Tier 2 Section 3 ROD or FEIS (approved January 28, 2010); and (2) the November 17, 2010 Reevaluation Addendum (to the May 6, 2010 Reevaluation concerning flood easements in Section 3), which was prepared to evaluate the impacts of additional permanent flood easements required for the final design of Section 3 (including modification of flood easement boundaries at North Fork Prairie Creek and Epsom Lateral and acquisition of flood easements within the existing floodplain of North Fork Prairie Creek) and determine the changes in impacts to the affected environment from what was documented in the Tier 2 Section 3 ROD (approved January 28, 2010). The analysis completed in the Reevaluations supports the FHWA's conclusions that none of the changes examined will have impacts sufficient to require preparation of a Supplemental Environmental Impact Statement (SEIS) or an additional Draft Environmental Impact Statement (DEIS) for Section 3, and therefore that the Tier 2 Section 3 FEIS and ROD remain valid. The detailed analysis of the reevaluation documents along with the Federal decision of minimal impact can be found on the project Web site at *http://www.i69indyevn.org/reevaluation.html.*

The actions by the Federal agencies on the project, and the laws under which such actions were taken, are described in the Reevaluation documents, the Department of the Army (DA) Permit and Regional General Permit letters (LRL–2010–466–djd), and in other documents in the FHWA

administrative record for the project. The ROD and other documents from the FHWA administrative record files for the Section 1, Section 2, and Section 3 projects are available by contacting FHWA, USACE or INDOT at the addresses provided above. Project information may also be available through the INDOT I–69 Project Web site at *http://www.i69indyevn.org/.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1).

**Max Azizi,**

*Acting Division Administrator, Indianapolis, Indiana.*

[FR Doc. 2011–9420 Filed 4–18–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system, as detailed below.

**Docket Number FRA–2011–0022**

*Applicant:* Central Oregon & Pacific Railroad, Inc., Mr. Steve Hefley, General Manager, 333 S.E. Mosher Avenue, P.O. Box 1083, Roseburg, Oregon 97470.

The Central Oregon & Pacific Railroad, Inc. (CORP) seeks approval of the proposed discontinuance and removal of the automatic block signal system (ABS) on three sections of the Roseburg Subdivision and on one section of the Siskiyou Subdivision. The proposal consists of:

1. On the Roseburg and Siskiyou Subdivisions between milepost (MP) 438.7 and MP 451, near Medford, OR, the removal of ABS signal numbers 427.4D; 4284/4283; 4298/4297; 4328/4327; 4358/4357; 4388/4389; 4406/4407; 4424/4423; 4444/4443; 4456/4457 and 4482/4483. An aspect change would be made in signal 4505.

2. On the Roseburg Subdivision between MP 471 and MP 475, near Grants Pass, OR, the removal of ABS signal numbers 4724/4725 and 4734/4735. Aspect changes would be made in signals 4783; 4751; 4684 and 4712.

3. On the Roseburg Subdivision between MP 507 and MP 509, near Glendale, OR, the removal of ABS signal numbers 5076/5077; 5082/5083 and 5089. Aspect changes would be made in signals 5034 and 5060.

4. On the Roseburg Subdivision between MP 559 and MP 563, near Dillard, OR, the removal of ABS signal numbers 5604/5605 and 5614/5615. Aspect changes would be made in signals 563.3; 565.5; 559.2 and 557.4.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2011–0022) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 13, 2011.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2011–9386 Filed 4–18–11; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Illinois Railway Museum**

[Waiver Petition Docket Number FRA–2011–0017]

The Illinois Railway Museum (IRYM) seeks a waiver of compliance with the *Steam Locomotive Inspection and Maintenance Standards,* 49 CFR 230.17, as they pertain to the requirement for 1,472 service day inspection for steam locomotive number 1630. Locomotive number 1630's 1,472 day inspection is due to expire in July, 2011, and IRYM requests the locomotive be allowed to continue in service until July, 2016, or after 1,472 service days, whichever is earlier. Alternately, IRYM requests an extension through October, 2011. IRYM is not requesting waiver of any other inspection requirements, and is specifically not requesting extension of the requirement to conduct the § 230.17 inspection after 1,472 service days.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2011–

0017) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 13, 2011.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2011–9385 Filed 4–18–11; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Mr. David Kloke**

[Waiver Petition Docket Number FRA–2011–0011]

Mr. David Kloke, a private individual, has constructed a newly built (2009) replica of a steam locomotive originally built in the 1800's. The *Leviathan #63* represents one of the four locomotives constructed by the Schenectady Locomotive Works for the Central Pacific Railroad in 1869; and is a sister to the *Jupiter #60,* of which a replica constructed in 1979, from the same blueprints and tooling is owned and operated by the National Park Service at Promontory Summit, Utah.

The *Leviathan* is constructed to educate the public concerning early American railroad history and simultaneously convey knowledge about the design, capabilities, operation, and history of this type of locomotive. Mr. Kloke states that *Leviathan* is not to be put into regular commerce as either a passenger or freight locomotive. Nevertheless, it will occasionally pull some cars appropriate for its historic and educational mission, and will be used only for special events.

As a newly constructed locomotive, *Leviathan* cannot avail itself of several provisions of Title 49 CFR that are grandfathered for antiquated equipment, such as *Leviathan* represents. By letter of February 4, 2011, and supplemental letter of March 31, 2011, Mr. Kloke petitions that due to the unique purpose, nature, and use of this locomotive, certain regulations under 49 CFR part 223, 231.15(b) and (d), and 231.17(c) should be determined to be inapplicable to the *Leviathan.* In the event FRA does not determine the inapplicability of these regulations, Mr. Kloke requests relief from 49 CFR part 223, Safety Glazing Standards (§ 223.9 *Requirements for new or existing equipment)* and 49 CFR part 231, Railroad Safety Appliance Standards (§ 231.15 (b) and (d), *Steam locomotives used in road service—Pilot sill-steps* and *Side handholds* and (§ 231.17(c), *Specifications common to all steam locomotives—Handrails).*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2011–0011) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 13, 2011.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2011–9384 Filed 4–18–11; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8233

**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 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

**DATES:** Written comments should be received on or before June 20, 2011 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:** *Title:* Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

*OMB Number:* 1545–0795.

*Form Number:* 8233.

*Abstract:* Compensation paid to a nonresident alien individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, such compensation may be exempt from withholding because of a U.S. tax treaty or the personal exemption amount. Form 8233 is used to request exemption from withholding. Nonresident alien students, teachers, and researchers performing dependent personal services also use Form 8233 to request exemption from withholding.

*Current Actions:* There are no changes being made to Form 8233 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 480,000.

*Estimated Time per Respondent:* 2 hrs., 45 min.

*Estimated Total Annual Burden Hours:* 1,320,000.

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: April 4, 2011.

**Yvette B. Lawrence,**

*IRS Reports Clearance Officer.*

[FR Doc. 2011–9461 Filed 4–18–11; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8848

**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 8848, Consent to Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).

**DATES:** Written comments should be received on or before June 20, 2011 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Consent To Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).

*OMB Number:* 1545–1407.

*Form Number:* 8848.

*Abstract:* Form 8848 is used by foreign corporations that have (a) completely terminated all of their U.S. trade or business within the meaning of temporary regulations sections 1.884–2T(a) during the tax year or (b) transferred their U.S. assets to a domestic corporation in a transaction described in Code section 381(a), if the foreign corporation was engaged in a U.S. trade or business at that time.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 5 hours, 46 minute.

*Estimated Total Annual Burden Hours:* 22,500.

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: April 4, 2011.

**Yvette B. Lawrence,**

*IRS Reports Clearance Officer.*

[FR Doc. 2011–9462 Filed 4–18–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 990–BL; Schedule A (Form 990–BL), Form 6069

**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 990–BL, Schedule A (Form 990–BL), Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, and Form 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction.

**DATES:** Written comments should be received on or before June 20, 2011 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Joel Goldberger, (202) 927–9368, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 990–BL, Schedule A (Form 990–BL), Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, and Form 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction.

*OMB Number:* 1545–0049.

*Form Number:* Form 990–BL; Schedule A (Form 990–BL), and Form 6069.

*Abstract:* IRS uses Form 990–BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in proscribed activities. The tax is figured on Schedule A and attached to Form 990–BL. Form 6069 is used by coal mine operators to figure the maximum deduction to a black lung benefit trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions.

*Current Actions:* There are no changes being made to these forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, and not-for-profit institutions.

*Estimated Number of Respondents:* 22: Form 990–BL Schedule A (Form 990–BL); 1: Form 6069.

*Estimated Time per Respondent:* 31 hours, 34 minutes—Form 990–BL; 9 Hours, 56 minutes—Form 6069.

*Estimated Total Annual Burden Hours:* 563.

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 29, 2011.

**Yvette B. Lawrence,**

*IRS Reports Clearance Officer.*

[FR Doc. 2011–9463 Filed 4–18–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1028

**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 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

**DATES:** Written comments should be received on or before June 20, 2011 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger at the Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

*OMB Number:* 1545–0058.

*Form Number:* 1028.

*Abstract:* Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 50.

*Estimated Time per Respondent:* 50 hours, 54 minutes.

*Estimated Total Annual Burden Hours:* 2,545.

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 26, 2011.

**Yvette B. Lawrence,**

*IRS Reports Clearance Officer.*

[FR Doc. 2011–9464 Filed 4–18–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2011

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Publication of inflation adjustment factors and reference prices for calendar year 2011 as required by section 45(e)(2)(A) of the Internal Revenue Code (26 U.S.C. 45(e)(2)(A)), section 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)), and section 45(e)(10)(C) (26 U.S.C. 45(e)(10)(C)).

**SUMMARY:** The 2011 inflation adjustment factors and reference prices are used in determining the availability of the credit for renewable electricity production, refined coal production, and Indian coal production under section 45.

**DATES:** The 2011 inflation adjustment factors and reference prices apply to calendar year 2011 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to 2011 sales of refined coal and Indian coal produced in the United States or a possession thereof.

*Inflation Adjustment Factors:* The inflation adjustment factor for calendar year 2011 for qualified energy resources and refined coal is 1.4459. The inflation adjustment factor for Indian coal is 1.1066.

*Reference Prices:* The reference price for calendar year 2011 for facilities producing electricity from wind is 4.68 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are $31.90 per ton for calendar year 2002 and $55.66 per ton for calendar year 2011. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy have not been determined for calendar year 2011.

Because the 2011 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2011. Because the 2011 reference price of fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2011. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2011.

*Credit Amount by Qualified Energy Resource and Facility, Refined Coal, and Indian Coal:* As required by section 45(b)(2), the 1.5-cent amount in section 45(a)(1), the 8-cent amount in section 45(b)(1), and the $4.375 amount in section 45(e)(8)(A) and the $2.00 amount in section 45(e)(8)(D), are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2011 under section 45(a) is 2.17 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.08 cent per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic renewable energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2011 under section 45(e)(8)(A) is $6.33 per ton on the sale of qualified refined coal. The credit for steel industry fuel is $2.89 per barrel-of-oil equivalent of steel industry fuel sold. The credit for Indian coal production for calendar year 2011 under section 45(e)(10)(B) is $2.2 per ton on the sale of Indian coal.

**FOR FURTHER INFORMATION CONTACT:** Philip Tiegerman, IRS, CC:PSI:6, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 622–3110 (not a toll-free call).

**Christopher T. Kelley,**

*Special Counsel (Passthroughs & Special Industries).*

[FR Doc. 2011–9471 Filed 4–18–11; 8:45 am]

**BILLING CODE 4830–01–P**

# FEDERAL REGISTER

Vol. 76 Tuesday,

No. 75 April 19, 2011


Part II

## Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 433

Medicaid Program; Federal Funding for Medicaid Eligibility Determination and Enrollment Activities; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 433**

**[CMS–2346–F]**

**RIN 0938–AQ53**

# Medicaid Program; Federal Funding for Medicaid Eligibility Determination and Enrollment Activities

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule will revise Medicaid regulations for Mechanized Claims Processing and Information Retrieval Systems. We are also modifying our regulations so that the enhanced Federal financial participation (FFP) is available for design, development and installation or enhancement of eligibility determination systems until December 31, 2015. This final rule also imposes certain defined standards and conditions in terms of timeliness, accuracy, efficiency, and integrity for mechanized claims processing and information retrieval systems in order to receive enhanced FFP.

**DATES:** *Effective Date:* These regulations are effective on April 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Richard Friedman, (410) 786–4451.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. The Current State of the Medicaid Management Information System (MMIS)*

A Medicaid management information system (MMIS) is a mechanized system of claims processing and information retrieval used in State Medicaid programs under title XIX of the Social Security Act (the Act). The system is used to process Medicaid claims from providers and to retrieve and produce utilization data and management information about medical care and services furnished to Medicaid recipients. The system also is potentially eligible to receive enhanced administrative funding from the Federal government under section 1903(a)(3) of the Act. Specifically, section 1903(a)(3)(A)(i) of the Act provides that Federal financial participation (FFP) is available at 90 percent of expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems as the "Secretary determines are likely to provide more efficient, economical and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of title XVIII [Medicare]." In addition, section 1903(a)(3)(B) of the Act provides for the availability of FFP at 75 percent of expenditures attributable to operating the "systems * * * of the type described in [section 1903(a)(3)] subparagraph (A)(i)," which are approved by the Secretary and meet certain other requirements (including requirements relating to explanations of benefits). For purposes of this final rule, we refer to 90 percent and 75 percent FFP as "enhanced" FFP since it is greater than the 50 percent FFP available for most Medicaid administrative expenses. In addition, section 1903(r) of the Act places conditions on a State's ability to receive Federal funding for automated data systems in the administration of the State plan.

To receive an enhanced match, the Secretary must find that the mechanized claims and information retrieval system is adequate to provide more efficient, economical, and effective administration of the State plan. The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) (collectively referred to as the Affordable Care Act) also made additional changes to the requirements within section 1903(r) of the Act relating to the reporting of data to the Secretary; guidance on these requirements will be issued in a separate rulemaking document. Our Federal regulations concerning mechanized claims processing and information retrieval systems are at 42 CFR part 433, subpart C. A State that chooses to develop, enhance, or replace its required system or subsystems must first submit for approval an Advanced Planning Document (APD). The general Health and Human Services (HHS) requirements for approval of APDs are found at 45 CFR part 95, subpart F.

### *B. Availability of Enhanced FFP for Automated Eligibility Systems*

Historically, Medicaid eligibility for many applicants and recipients was determined by an agency other than the State Medicaid agency. Under section 1902(a)(10)(A)(i) of the Act, States were required to provide Medicaid to recipients under the Aid to Families with Dependent Children (AFDC) program, as well as recipients of the Supplemental Security Income (SSI) program. In these cases, eligibility determinations were derived from the cash welfare-assistance determination. As a result, States that maintained a Medicaid eligibility determination system usually integrated these systems into the public welfare systems. In the October 13, 1989 **Federal Register** (54 FR 41966, effective November 13, 1989), we published a final rule excluding eligibility determination systems from the enhanced funding that was available under section 1903(a)(3) of the Act, reasoning that the close interrelationship between these cash assistance programs and Medicaid eligibility rendered such enhanced assistance redundant and unnecessary (54 FR 41966 through 41974). As a result, we revised the definition of mechanized claims processing and information retrieval systems to exclude eligibility determination systems.

We also indicated in the 1989 final rule that to receive any FFP for Medicaid purposes for an eligibility determination system after November 13, 1989, a State must submit an APD for funding in accordance with the requirements of 45 CFR Part 95, Subpart F. If we approved the APD, the State agency would receive 50 percent FFP for administrative costs under section 1903(a)(7) of the Act for the system's design, development, and installation, and operation.

### *C. Changes in Medicaid Eligibility Policies*

Since we issued the October 13, 1989 final rule, a series of statutory changes have dramatically affected eligibility for Medicaid and how Medicaid eligibility is determined. Among other things, new eligibility coverage groups were created and expanded, and in 1996, Medicaid eligibility was "de-linked" from the receipt of cash assistance when the AFDC program was replaced by the Temporary Assistance to Needy Families (Pub. L. 104–193, enacted on August 22, 1996) (TANF) program created by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (Pub. L. 104–193, enacted on August 22, 1996).

With the passage of the Balanced Budget Act of 1997 (Pub. L. 105–33, enacted on August 5, 1997) (BBA), States were required to coordinate eligibility for and enrollment in Medicaid with the new Children's Health Insurance Program (CHIP) to ensure enrollment of children in the appropriate program. With passage of the "Express Lane Eligibility" provisions in section 203 of the Children's Health

Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3) (CHIPRA), States were provided with the option, and are encouraged, to coordinate and expedite eligibility for children in Medicaid and CHIP by using findings regarding income and other eligibility criteria made by other agencies, such as the Supplemental Nutrition Assistance Program (SNAP), as the basis for Medicaid and CHIP eligibility adjudications.

With the passage of the Affordable Care Act, we expect that changes to Medicaid eligibility policies and business processes need to be adopted. States will need to apply new rules to adjudicate eligibility for the program; enroll millions of newly eligible individuals through multiple channels; renew eligibility for existing enrollees; operate seamlessly with newly authorized Health Insurance Exchanges (see section 1311 of the Affordable Care Act) whether run by the State or the U.S. Department of Health and Human Services (HHS) if the State chooses not to operate a State Exchange (hereafter referred to as "Exchanges"); participate in a system to verify information from applicants electronically; incorporate a streamlined application used to apply for multiple sources of coverage and health insurance assistance; and produce notices and communications to applicants and beneficiaries concerning the process, outcomes, and their rights to dispute or appeal. We further anticipate, following consultation with States and other stakeholders, additional standard Federal requirements for more timely and detailed reporting of eligibility and enrollment status statistics, including breakdowns by eligibility group, demographic characteristics, enrollment in managed care plans, and participation in waiver programs.

System transformations will be needed in most States to accomplish these changes. These systems transformations should be undertaken in full partnership with Exchanges in order to meet coverage goals, minimize duplication, ensure effective reuse of infrastructure and applications, produce seamless enrollment for consumers, and ensure accuracy of program placements (see sections 1413 and 2201 of the Affordable Care Act). Extensive coordination and collaboration will be required between Exchanges and Medicaid, including on oversight and evaluation of the interoperability of the Exchange and Medicaid systems. In addition, States may consider how to coordinate systems changes with the eligibility determination systems used for other health and human services programs, such as SNAP, because a large share of individuals who are eligible for Medicaid also are eligible for other programs as well.

## II. Provisions of the Proposed Regulations

In the November 8, 2010 **Federal Register** (75 FR 68583), we published a proposed rule that revised the Medicaid regulations for Mechanized Claims Processing and Information Retrieval Systems. Specifically, we proposed to amend the definition of Mechanized Claims Processing and Information Retrieval Systems to include mechanized eligibility determination systems, which would include the enrollment and eligibility reporting activities associated with such systems. We also proposed that the enhanced FFP would be available for design, development and installation or enhancement of eligibility determination systems until December 31, 2015.

## III. Analysis of and Responses to Public Comments

We received 40 timely comments on the November 8, 2010 proposed rule (75 FR 68583 through 68595).

Commenters expressed general support for the policies outlined in the proposed rule. Specifically, commenters agreed that providing enhanced matching funds for Medicaid eligibility systems is appropriate and necessary. Commenters expressed almost universal agreement that this enhanced match is critical to support State efforts to modernize their eligibility systems, and will allow States to bring these systems into the 21st Century so that they can provide cost-effective, accurate, reliable, and beneficiary-friendly assessments of eligibility for the Medicaid program. In light of the substantial changes made by the Affordable Care Act, commenters agreed that it is more important than ever to ensure that eligibility determination systems are designed and operated using the most up-to-date technological and business process solutions. With States expected to enroll millions of newly eligible individuals into Medicaid and to ensure seamless coordination with the new Exchanges, it is essential that States have modern and cost-effective eligibility systems that will accurately enroll eligible individuals, without unnecessarily cumbersome processes or delays. Commenters also believed that such initial investments would ultimately lower ongoing maintenance and operational expenses, driving savings for both States and the Federal government.

Commenters also noted that HHS had released additional documents at approximately the same time as the November 8, 2010 proposed rule, which reinforced our strategic direction and received their support. Specifically, commenters acknowledged the joint guidance released by CMS and the Office of Consumer Information and Insurance Oversight (now CMS' Center for Consumer Information and Insurance Oversight (CCIIO)) entitled, "Exchange/Medicaid Information Technology Guidance, version 1.0," and the Funding Opportunity Announcement for Cooperative Agreements to Support Early Innovator Grants for Exchanges. Commenters indicated that they greatly appreciated the foresight of CMS and CCIIO, and are supportive of the guidance providing direction towards a service-oriented IT infrastructure based on interoperable systems and that they fully support the concept of a collaborative IT development approach among States, CMS and CCIIO.

A summary of additional major issues and our responses follow. Since many of the comments were general in nature and not specific to any particular regulatory provision, we have identified the comments by nine categories:

- Requests for enhanced Federal funding.
- Requests for additional guidance.
- Public feedback and suggestions related to the seven standards and conditions.
- Public feedback and suggestions related to the APD process.
- Issues related to the transition period for compliance.
- Comments regarding CMS' strategy for monitoring and oversight, including performance reviews.
- Issues related to partial systems improvements or modernizations.
- Specific issues by regulatory provision.
- Issues related to the Regulatory Impact Analysis including the cost estimates, and information collection.

### *A. Requests for Enhanced Federal Funding*

*Comment:* Numerous commenters requested that the enhanced FFP for design, development, and installation or enhancement of eligibility determination systems be extended beyond the December 31, 2015 deadline. Commenters indicated that new and significant enhancements may be needed beyond December 31, 2015, particularly in order to affect future legislative changes to Medicaid eligibility or to keep pace with technological innovations. The

commenters noted that State budgets continue to be in a state of crisis and State revenues may not fully recover until 2016 or later; consequently, the Federal government must take responsibility for ensuring adequate funding of the program infrastructure to ensure compliance by January 1, 2014. Commenters recommended several different options in this regard. Some commenters indicated that CMS should consider that the requirement apply to funds allocated rather than expended. Other commenters believed that CMS could allow for the possibility of a continued enhanced match beyond the deadline in specified circumstances (many outside the control of State governments), such as new Federal requirements or major advances in computer technology. Other exception categories suggested by commenters included unforeseen issues in implementation and/or new opportunities for interoperability with other health and human services programs. Other commenters indicated that CMS should extend funding if States have approved APDs on or before December 31, 2015 and the project has not been completed or if States are planning to leverage improvements from other State Medicaid eligibility systems. The commenters further indicate that they are concerned that they will be unable to receive legislative approval to begin their project, develop an APD, receive Federal approval, and then complete work on the project while meeting the standards and conditions before the enhanced FFP ends on December 31, 2015. Still other commenters believed the date should be changed to coincide with the end of the Federal fiscal year 2015 and 2016, so that enhanced funding would expire September 30, 2016. One commenter suggests that the deadline should be interpreted to apply to costs for projects receiving enhanced funding and obligated by that date rather than expended by December 31, 2015. One commenter expressed concern that a requirement for States to maintain existing eligibility processes for pregnant women and children until September 30, 2019 will mean States have to maintain dual eligibility systems during this time period. At the end of 2019, the IT systems will need to be updated to remove this function and that enhanced funding should be extended for States to make changes to eligibility systems when this requirement ends.

*Response:* We appreciate the significant number of comments we received on this aspect of our proposed rule and the view of commenters that we should eliminate, extend, or modify the deadline for expiration of the enhanced match for eligibility systems. Nonetheless, while we appreciate the opinions of commenters, we continue to believe that the deadline we established in the proposed rule is appropriate and proper. We believe it is within our authority to determine that by a certain date, additional investments in eligibility determination systems will no longer continue to result in "more" efficient, effective or economical administration of the State Plan, as required by section 1903(a)(3)(A)(i) of the Act. Further, we continue to believe that December 31, 2015 is a reasonable and proper end-point for when investments cease to result in acceptable increases in efficiency, economy, or effectiveness. Our reason is threefold: First, changes imposed by the Affordable Care Act will require immediate attention and commitment to new technologies for eligibility and enrollment systems. Second, once appropriate systems are deployed to support the coverage expansions and other eligibility changes required by the Affordable Care Act, we anticipate significant efficiencies in both application maintenance and business operations. Third, the additional 2 years we provided to States after the Medicaid expansion goes into effect allows ample time for States to refine and enhance the capability of the systems, and to capitalize on the efficiencies of these investments.

We articulated in the proposed rule that additional investments are unlikely to yield similar rates of improvement and a regular administrative match should be sufficient for efficient and effective administration of State Medicaid programs. We anticipate that the improved underlying infrastructure supporting both Medicaid and Exchanges will be strongly leveraged in support of a State's person-centric outreach, eligibility and enrollment activities across the health and human services spectrum.

With respect to the request made by some commenters to establish an exceptions process, we believe this is already sufficiently provided for through our extension of enhanced FFP for an additional 2 years beyond the date for operation of the Exchanges. We are concerned that broadening or codifying exceptions to the deadline in the way suggested by the commenters would effectively render the deadline moot for many purposes and projects.

The September 30, 2019 date noted by one commenter is the end-date for maintenance of effort (MOE) provisions for children (not pregnant women). Because of these MOE provisions, States must not have more restrictive "eligibility standards, methodologies, or procedures" for children than those in effect on March 23, 2010. The MOE requirement does not mean that States must maintain identical standards, methodologies or procedures as those in effect on March 23, 2010, and it does not mean that the same IT system or IT system processes be used. Rather, the MOE requires that the eligibility standards, methods, and procedures be no more restrictive than those in effect on March 23, 2010.

We are not certain of what the commenter is concerned about in terms of States' needing to maintain dual eligibility processes, but we assume he or she may be concerned about the interaction of the MOE requirements and the requirement under section 2002 of the Affordable Care Act. The conversion to a MAGI-equivalent income standard required under section 2002 of the Affordable Care Act is designed in the statute to ensure that individuals who meet the eligibility requirements in effect as of March 23, 2010 do not lose eligibility as a result of the shift to MAGI. Guidance will be provided by the Secretary regarding how States can accomplish the required conversion, and once the new MAGI-equivalent income standard has been determined, the MOE requirements will be applied to such converted standard, using the MAGI methodologies to determine an individual's income, as required under the Affordable Care Act. Therefore, the MOE requirements will not require operating dual eligibility systems.

After consideration of the public comments received, we are maintaining the December 31, 2015 deadline in our regulations for eligibility determination systems.

*Comment:* One commenter requested that CMS consider interpreting the deadline of December 31, 2015 for projects receiving enhanced Federal funding to requiring the funds be obligated by that date rather than expended.

*Response:* We indicated in the proposed rule (75 FR 68589) that States would need to incur costs for goods and services furnished no later than December 31, 2015 to receive 90 percent FFP for design, development, installation, or enhancement of an eligibility system. For further clarification, this means that States must ensure that goods and services (for example, eligibility and enrollment modules, applications, systems, etc.) are provided to States no later than close of

business December 31, 2015. Thus, for example, if an amount has been obligated by December 31, 2015, but the good or service has not yet been furnished by that date, then such expenditure would not be eligible for enhanced FFP.

As a result of this comment, we are adding language to the regulations text to clarify this point.

*Comment:* Numerous commenters asked whether enhanced funding is available for subsystems that interface with and/or are part of the eligibility process since such subsystems will require modifications to meet the requirements of the Affordable Care Act. Additionally, commenters sought enhanced FFP for projects that meet Medicaid Information Technology Architecture (MITA) guidance, yet still may need to integrate with legacy systems, with the understanding that, where feasible, open rules and specifications developed for programs will be used to read, insert, or update data into systems that currently do not have the functionality of being interoperable. The commenters agreed that APDs would need to be put in place and approved to modernize the legacy systems/subsystems.

*Response:* We agree that enhanced funding can be available for subsystems that meet the standards and conditions outlined in this final rule. However, to the extent that such subsystems are reliant on or tied to a larger legacy system or suite of systems that introduce performance risk or ongoing costs to the operation of the subsystem, we may find that the system as a whole is not meeting the standards and conditions of this final rule and decline to approve enhanced match on that basis. It is our desire to acknowledge that subsystem modernization may be an entirely appropriate pathway to a high performing Medicaid program, while at the same time not binding ourselves to approve enhanced match for minor components of a large, fragmented legacy system that has little chance of delivering to expected business results. CMS will review APDs and make determinations regarding such subsystems, and to the extent that such subsystems meet with the standards and conditions outlined in this final rule and States can document that there is no performance risk or ongoing unnecessary costs, as a result of the subsystem being a part of larger legacy system, CMS will make determinations regarding enhanced funding accordingly.

*Comment:* Several commenters want to ensure that enhanced FFP is available to States that are not completely MITA compliant, but rather to States that can demonstrate efficiencies are being achieved, redundancy is being decreased/eliminated, and system integration is being realized through application programming interfaces (API). States could demonstrate that APIs, in which a particular set of rules and specifications for services and resources have been developed by one software program that can be accessed and used by another software program implementing the API, can be used and serve as an interface between different software programs and facilitating their interaction, and thus, leading to efficiencies. Commenters added that with an approved APD reasonable and measureable milestones of system compliance can be demonstrated.

*Response:* Enhanced FFP is available for those systems that comply with the standards and conditions of this final rule. Aligning to, and advancing increasingly, in MITA maturity for business, architecture, and data is one of the standards and conditions that must be met. We did not use the term "MITA compliant" in our proposed rule because MITA maturity is by definition, a matter of degree. We agree that achieving increasing levels and degrees of MITA maturity is likely to happen in stages. Recognizing this, we will be requiring a MITA roadmap that delineates how the proposed system enhancements for eligibility and enrollment functions will fit into the States' greater MITA framework. Such requirement will align with our expectations to see States continuing to make measurable progress in implementing their MITA roadmaps. We believe it is critical to build on and accelerate the modernization we have collectively begun under MITA, so that States achieve the final vision of MITA and have a comprehensive framework with which to meet the technical and business demands required by an environment that will increasingly rely on health information technology and the electronic exchange of healthcare information to improve health outcomes and lower program costs.

*Comment:* One commenter requested clarification as to whether enhanced FFP will be available where a project has some components that meet the standards and guidelines required for enhanced FFP, but may include other components that do not.

*Response:* We believe it is entirely appropriate to accomplish system modernization through phasing. In cases such as the one raised by the commenter, the changes being made to various system components will need to be reviewed through submission of an APD and review. We will need to ensure that component-based development is on a path toward an entire system or subsystem coming into compliance with the standards and conditions of this final rule. We would expect that if the components that do not meet the standards and conditions are essentially preventing the entire system or subsystem from meeting the standards and conditions, then the State would have a plan for updating such components, even if all components are not updated at the same time. For example, we do not expect that we would offer enhanced FFP for improvements to just the reporting aspect of the traditional, legacy eligibility system, if the State does not have a plan for bringing this entire legacy system into compliance with the standards and conditions. In addition, to receive enhanced FFP, States may not ignore any single standard or condition regardless of the level or breadth of their compliance with the remaining standards, although if a State is weaker or more at risk with certain standards or conditions, the State should include a roadmap in their APD demonstrating how they intend to come into compliance. We intend to carefully track progress against approved roadmaps when determining if system updates continue to meet the standards and conditions for enhanced match.

*Comment:* One commenter suggests that CMS clarify that enhanced funding is also available for "traditional" eligibility determinations, such as those made on behalf of medically needy clients, buy-in, elderly, disabled, long-term care and home and community-based individuals.

*Response:* To the extent that eligibility systems meet all requirements, standards, and conditions contained in this final rule, States will be eligible for enhanced FFP, and such enhanced funding is not dependent upon the eligibility group using the system.

*Comment:* One commenter recommended that CMS clarify that enhanced funding is available for personnel costs, as well as the costs of physical systems. Specifically, the commenter notes that Federal regulations at § 432.50(b) provide for enhanced funding at 75 percent for the costs of staff "engaged directly in the operation of mechanized claims processing and information retrieval systems" and for enhanced funding at 90 percent for staff costs related to the design, development, and installation of these systems. FFP is provided at 50 percent for the costs of training personnel when new systems are developed.

*Response:* We did not propose amendments to the regulations at § 432.50(b); thus, enhanced funding is available for staff time spent on mechanized eligibility determination systems in the same manner that they apply to all mechanized claims processing and information retrieval systems, since mechanized eligibility determination systems are now considered to be part of such systems, assuming the requirements of this section are met.

*Comment:* One commenter asked that we extend the enhanced funding to encompass the testing of the effectiveness of the eligibility systems, including testing beneficiary experience such as allowing States to receive reimbursement for conducting focus groups with community-based workers and/or beneficiaries who rely on the system to apply for and renew Medicaid coverage.

*Response:* Again, to the extent these costs would be reimbursable under § 432.50(b), they would be eligible for reimbursement under this rule as well (assuming all standards and conditions are met). States would need to ensure that the expenditures are tied to the mechanized eligibility determination system and follow all procedures for seeking approval.

*Comment:* Several commenters requested that CMS require States to pass enhanced match through to counties. The commenters stated that CMS should ensure that if a State requires counties to contribute to the non-Federal share of Medicaid and Medicaid administrative costs, and that receives enhanced FFP; the State should be required to share the enhanced FFP in proportion to the counties' contribution. The commenters stated that this requirement would reflect the clear Congressional intent as expressed in the enhanced Federal Medical Assistance Percentage (FMAP) requirements for certain States in section 5001(g)(2) of the American Recovery and Reinvestment Act (Pub. L. 111–5, enacted on February 17, 2009) and strengthened by section 10201(c)(6) of the Affordable Care Act.

*Response:* The commenters cite section 10201(c)(6) of the Affordable Care Act, which added section 1905(cc) to the Act. Under this provision, a State may not be eligible for certain increased FMAPs associated with health care reform and disaster recovery if the State "requires that political subdivisions pay a greater percentage of the non-Federal share * * * than the respective percentages that would have been required by the State under the State plan under this title, State law, or both, as in effect on December 31, 2009." Since the level of Federal funding available for the costs of the eligibility and enrollment determination systems under this final rule will increase and the level of the non-Federal share specific to such expenditures will decrease, there could be an effect on the level of required political subdivision contributions that would be subject to this limitation. We already issued guidance on how the political subdivision contribution limitations under section 1905(cc) apply in an SMD letter issued November, 9, 2010 (see *http://www.cms.gov/smdl/downloads/SMD10023.pdf*). Rather than reiterate what is already in that guidance, we refer States and counties to such guidance. States and counties may also work with CMS to determine whether any required contributions by political subdivisions toward the non-federal share of these expenditures would be in compliance with political subdivision contribution provision.

*Comment:* One commenter urged CMS to encourage States to consider in establishing actuarially sound Medicaid managed care rates, the additional systems-related investments by Medicaid health plans that are likely to be needed to interface with new State systems.

*Response:* We believe this commenter is asking about managed care rates, and not the proposal we issued with regard to mechanized claims processing and information retrieval systems, and when they will be eligible for enhanced FFP. As our proposed rule did not address Medicaid managed care rates, we believe this comment is outside the scope of the proposed rule.

*Comment:* One commenter asked for clarification on whether the addition of eligibility determination and enrollment systems is limited to stand-alone systems administered directly by the single State Medicaid Agency. The commenter indicates that some State eligibility systems are a joint venture with the HHS and the United States Department of Agriculture and are used to determine eligibility for financial assistance programs in addition to medical assistance programs.

*Response:* The enhanced funding can apply to "stand alone" systems or "integrated eligibility" systems, assuming they meet the standards and conditions specified in this final rule. Many States are considering ways to coordinate Medicaid, CHIP and Exchange eligibility with other health and human services programs. However, we will only provide enhanced funding for the portion of the costs that can be directly attributed to Medicaid eligibility and enrollment functions. We also direct the commenter to the discussion on cost-allocation in OMB Circular A–87 (*http://www.whitehouse.gov/omb/circulars_a087_2004*) specifying appropriate allocation of costs when the system includes various benefiting programs.

*Comment:* Other commenters have asked whether the enhanced funding can be used to support updating and completing the MITA assessment and roadmap, and performance measurement.

*Response:* We agree with the commenters that it is appropriate to request enhanced funding for updating the MITA assessment and the roadmap, since one of the standards and conditions listed in § 433.112 speaks directly to MITA maturity. Enhanced funding is available assuming that updates are related to the standards and conditions and the State's plan for meeting them. We are making no further additions to the rule in response to this comment.

*Comment:* Some commenters believed the timeframes related to the enhanced funding for the development of eligibility solutions seems to be extremely aggressive. Many of the activities related to the planning, design, development, and deployment of eligibility solutions will be new activities for both State and vendor staff. States will need to consider how they will integrate and leverage eligibility solutions into their Health Insurance Exchanges, their integrated human services eligibility solutions, their MMIS, and other points of intersection. Just the planning phase leading up to an approved APD and FFP release could easily consume more than a year. The commenters suggested that CMS should consider lengthening the timeframes for the completion of these efforts related to eligibility components.

*Response:* We recognize that the timelines for developing new eligibility systems, and for submitting and approving new APDs, must be greatly accelerated from historical and traditional experiences and approaches in order to meet the timelines in the Affordable Care Act and to take advantage of enhanced match prior to December 31, 2015. We emphasize that we expect to operate efficiently in processing APDs and work collaboratively with States to implement these changes, and we expect States to operate quite differently in how they pursue new development, share and reuse assets, and take advantage of "lightweight" applications and new technologies to meet these needs. We

noted in our proposed rule that dramatic systems transformations would be necessary and while the timeframes may appear aggressive to some, the Department is committed to providing leadership, technical assistance, and financial support to produce the IT infrastructure necessary to accomplish the tasks required by the Affordable Care Act according to the timelines specified in the law. We note that the Affordable Care Act requires that States be able to enroll the newly eligible individuals and coordinate with Health Insurance Exchanges by January 1 of 2014. Thus, our timeline accounts for this statutory deadline, while still maintaining a period of two years (through December 31, 2015) to account for potential delays or unforeseen obstacles in developing new or improved eligibility determination systems.

We are making no further revisions to the rule as a result of this comment.

*B. Requests for Additional Guidance*

*Comment:* One commenter requested that CMS produce and make available to the States a project planning template illustrating key entry points to major phases of the projects.

*Response:* We will be providing a whole series of artifacts and supporting tools, documentation, diagrams to States as part of our technical assistance, collaboration, and governance. We will consider the usefulness of a template for project planning as we develop and publish these materials.

*Comment:* Several commenters requested additional guidance on the IT enterprise.

*Response:* We will issue additional Guidance for Exchange and Medicaid Information Technology Systems (IT guidance). We issued IT guidance version 1.0 on November 30, 2010, and expect to issue, expand and renew that guidance over time. These guidance documents will help States with the business rules necessary to design, develop, and implement State eligibility systems that can meet the requirements of the Affordable Care Act.

*Comment:* Several commenters inquired about future guidance on MITA, the MITA alignment process, and whether the process for certifying and/or validating MITA alignment will be detailed in the final rule.

*Response:* We have provided continued guidance and artifacts associated with MITA since the MITA Initiative began. We will continue to provide that guidance and related toolsets and details. We will consider a number of elements in reviewing states' alignment with MITA and increasing MITA maturity, including States' self-assessments and MITA roadmaps.

*Comment:* Several commenters inquired about the "modular, flexible approach to systems development" and increasing MITA alignment requirements, as well as whether such requirements apply to all MMISs or only eligibility determination systems. The commenters believed that to promote the feasibility of a "modular, flexible approach to systems development" of Medicaid systems, CMS should continue to fund and aggressively develop necessary interfaces and technical standards that are required to facilitate MMIS interoperability.

*Response:* As stated in the above responses, we intend to issue a series of tools for States to use in ensuring the facilitation of interoperability. It should be noted that the requirements of this final rule apply to all MMISs, not just eligibility determination systems (which will now be considered part of the MMIS). We are making no further additions to the rule as a result of this comment.

*Comment:* Several commenters urged CMS to develop stronger Federal guidelines for enrollment and renewal procedures to accompany new eligibility systems, including guidance on acceptable data matches creating safe harbors for data sources used in electronic income verification, to allow States to move to paperless income verification with confidence that they comply with quality and accuracy standards. In developing additional requirements, the commenters urged CMS to ensure that Medicaid's application, renewal and verification procedures are no more paperwork intensive or burdensome than those for Exchange tax credit applicants.

*Response:* We agree with the commenters that simplification and streamlining of the consumer experience are expected outcomes of the Affordable Care Act. However, business process and policy requirements for determining eligibility are outside the scope of this regulation and will be addressed in separate rulemaking. As discussed later in the response to comments concerning performance measures, we will also publish measures concerning expected business outcomes in separate notices. We are making no further additions to this section of the final rule.

*Comment:* Some commenters requested reforms and clarifications regarding cost allocation principles.

*Response:* Our proposed rule did not contain any proposals to alter cost allocation principles, and we believe it is prudent that CMS and the States continue to follow the cost allocation principles outlined by OMB in Circular A–87. As stated in the proposed rule, for integrated eligibility systems, assuming those systems meet the standards and conditions outlined in the final rule, only the costs associated with Medicaid eligibility and enrollment functions will be eligible for the enhanced funding and funding for Exchange activities is fully Federally funded through January 1, 2015. We discussed cost allocation and the principles of cost allocation in guidance that was released on November 2010; that is, the IT guidance version 1.0 and in the Funding Opportunity Announcement for the Early Innovator Grants. States can access the OMB Circular A–87 at *http://www.whitehouse.gov/omb/circulars_a087_2004.*

*Comment:* Several commenters asked for guidance on commercial off-the-shelf (COTS) software products, and indicated that such products are often modular, reusable, sharable, leveraged, and aligned with MITA. Commenters also stated that enhanced FFP should be available for COTS initial licensing and implementation service costs as well as ongoing software licensing and maintenance costs. Commenters also questioned why there is no language confirming established protections for COTS pre-existing intellectual property (IP) and newly developed IP used in eligibility modernization initiatives.

*Response:* We are not dictating specific solutions to States as they undertake their technology projects, as long as the standards and conditions of this final rule are met and we expect to work with States in an effort to share, reuse, and leverage other State solutions. For COTS products, we have a longstanding rule that the State must own any software that is designed, developed, installed or improved with 90 percent FFP (see § 433.112(b)(5)). In other words, software that is developed with public funds must be owned by the public and as a "public product" is available to be shared with other States. COTS-based solutions may still receive a 75 percent enhanced funding (that is, for licensing and implementation services costs), if they are related to the MMIS (including the eligibility determination system) and meet all the requirements of this final rule. In addition, current rules protecting intellectual property (such as copyright and/or patent laws) would simply apply in the way that they already do apply to intellectual property. Nothing in this final rule is attempting to alter those rules.

*Comment:* Several commenters asked that we define the terms "modular",

"modules", "models", and "successful models." Commenters indicated they are unclear about whether a model is equivalent to an architecture, reference model, process design, etc. for a given customer or class of customers and consistent with MITA architecture framework, process and planning guidelines, and maturity model.

*Response:* We believe it is important to frame our response in terms of the IT Guidance jointly issued by CMS and CCIIO. This guidance outlined a set of expectations and principles for sharing solutions and approaches between both Medicaid and the Exchanges. Consequently, we believe it is imperative for States and vendors to view all IT activities much more broadly than a single physical implementation of a set of technical capabilities.

"Modular" means reducing the complexity of a larger problem by breaking it down into small well defined pieces. For example, MITA business architecture reduced the complexity of the Medicaid program into eight high-level business areas. Each business area is further broken down/decomposed into smaller and manageable business processes. These business processes can be described as "modules". System components can also perform tasks in a similar fashion. "Modularity", if done right, accomplishes re-usability, maintainability, and reliability. The term also underscores our strong desire for States and the vendor community to develop "lighter-weight" and "loosely-coupled" approaches to the design of health care systems, including, but not limited to eligibility determination and enrollment functions.

In the MITA initiative, we have urged States to focus on designing sets of overarching and reusable functions that traditionally might have been included within one particular application and that would have been specific to that particular application, but that now could be used, in a consistent manner, by multiple applications used by the State. Additionally, we want to emphasize that the rules for processing data should be written in such a way as to be available to more than just one application. For example, whether it is a Web service querying for a response, or an Extract Transformation and Load (ETL) set of tools to move data from a database to an external interface, the rules that are invoked are the same, thus ensuring the underlying data maintains its inherent ability to consistently transform to the same information.

"Reference Models" focus on classification and conceptual structure. Typically, a Technical Reference Model, for example, consists of infrastructure and business applications that interface with a number of operating and network services through a variety of specific applications such as graphics and imaging, data management, data interchange, user interface, transaction processing, security and system/network management.

"Reference Architecture" is about proven solutions and best practices, typically without being vendor/platform specific. Typically arrayed in different tiers (access client tier, middle tier and data tier, for example), a technical reference architecture includes a client browser and an XML appliance to allow for access, a presentation layer using a portal with HTML and an application/Web server, business services applications, enterprise information integration, and operational data storage facility typically through a data base with data exploration capabilities sometimes arrayed via data marts.

We believe MITA 2.0 addresses all of the defined terms. We also urge readers interested in these and related topics to familiarize themselves with the MITA Framework, look for additional guidance in the various iterations of the IT Guidance, and contact CMS staff for additional clarifications related to specific circumstances.

*Comment:* Other commenters requested that the term "eligibility determination system" be defined. The term should indicate that eligibility determination system includes the technology interfaces for program applicants and beneficiaries, such as Web sites that include on-line applications and other Web features that allow individuals to use eligibility estimators, to report changes, to renew eligibility, or to seek information about their case status. Likewise, "eligibility determination system" should be defined to include computer generated notices and data.

*Response:* Our final rule considers systems that process claims for eligibility to be part of mechanized claims processing and information retrieval systems. Thus, to the extent that a function is part of processing the claim for eligibility, we believe it could be eligible for enhanced FFP under this final rule. We believe building an online application would likely be part of the system that processes claims and applications for eligibility. Additionally, we can envision how all of the components identified by the commenters will be part of an eligibility determination system, but we would need to understand more fully how such components are integrated into a system that processes claims for eligibility. States will explain in their APDs how the various components are part of the mechanized claims processing and information retrieval system and will meet with our standards and conditions.

We are making no further additions to this section of the final rule.

*Comment:* One commenter indicated that it would be helpful if CMS provided additional leadership and technical assistance in further standardizing data semantics and information nomenclature across the eligibility function.

*Response:* We agree with the commenter and look forward to working in close partnership with States, Exchanges, and the Office of the National Coordinator for Health Information Technology, and the HIT Policy and Standards Committees on this activity. We intend to enforce industry standards as they develop in order to promote interoperability, improve reliability of outputs and outcomes, and reduce development costs.

*Comment:* A few commenters spoke of the importance of ensuring that county governments act as full partners in the planning, design, oversight and operations of necessary Medicaid eligibility system transformations. To ensure that counties are poised to best assist Medicaid applicants and recipients, the commenters suggested that the Secretary develop model systems and deploy the necessary resources for implementation including technical assistance and support for capital investment.

*Response:* We agree with the commenter that States, Tribal organizations, County governments, and Federal government agencies should work together to ensure effective interoperability and to develop model systems, as well as to deploy the necessary resources for implementation including technical assistance and support for capital investment. We recognize the historical contribution made by counties to making eligibility determinations in most States. We look to States to determine how best to deploy and optimize assets within the State to accomplish the purpose and requirements of the Affordable Care Act.

*Comment:* Several commenters believe that, to support the one application concept and streamlined eligibility determinations for Medicaid and related programs (including CHIP, TANF, Food Stamps, and WIC), CMS should work with other Federal agencies to obtain agreement to allow sharing of data across those related programs.

*Response:* Our standard and condition regarding data exchange requires seamlessness with the Exchanges and also requires that States allow for interoperability with other health and human services programs. We also note that our standards and conditions require compliance with the standards and protocols adopted by the Secretary under sections 1104 and 1561 of the Affordable Care Act. We expect that such standards and protocols will promote reuse and data exchange.

*Comment:* One commenter believes that to support timely processing of eligibility, CMS should work with other Federal agencies that interface with State Medicaid agencies to allow a single point for correction of client data errors, including birthdates and erroneously posted death dates.

*Response:* We believe this comment addresses the actual program instructions and policy requirements for eligibility systems, and not the information technology solutions that will be needed for the systems themselves. Our requirements regarding these matters will be established in separate rulemaking.

*Comment:* One commenter requested that CMS offer strong guidance to the States on privacy and confidentiality issues that need to be observed in the new State systems.

*Response:* We agree that confidentiality and privacy are critical to protecting beneficiaries and providers. The final rule includes as a standard that systems ensure alignment with the HIPAA privacy, security and transaction standards.

*Comment:* One commenter indicates that we should issue guidance more definitively discussing the standards developed in response to section 1561 of the Affordable Care Act. The commenter noted that while section 1561 the Affordable Care Act is an outstanding source of ideas and information, section 1561 the Affordable Care Act standards appear to stop short of creating specific, concrete requirements.

*Response:* Section 1561 the Affordable Care Act requires HHS, in consultation with the Health Information Technology (HIT) Policy Committee and the HIT Standards Committee, to develop interoperable and secure standards and protocols that facilitate electronic enrollment of individuals in Federal and State health and human services programs. The HIT Policy and Standards Committees approved initial recommendations, and in September 2010, the Secretary adopted these recommendations. The recommendations include initial standards and protocols that encourage adoption of modern electronic systems and processes that allow a consumer to seamlessly obtain and maintain the full range of available health coverage and other human services benefits.

The HIT Policy and Standards Committees recommendations are available at *http://healthit.hhs.gov/portal/server.pt?open=512&mode=2&objID=3161.* We wish to note that one of the seven standards and conditions specifically requires States to ensure alignment with, and incorporation of, industry standards and specifies several national standards including standards and protocols adopted by the Secretary under section 1561 of the Affordable Care Act.

*Comment:* Another commenter suggested that we make all guidance documents, including the State Medicaid manual readily available.

*Response:* We agree. We are currently working to gather all applicable guidance documents on the CMS Web site. Guidance documents are already posted to several web sites, including the proposed rule (see regulations.gov), the IT guidance version 1.0, (see *http://www.hhs.gov/ociio/regulations/joint_cms_ociio_guidance.pdf*), Overview on the MITA framework, (see *http://www.cms.gov/MedicaidInfoTechArch*), and Overview of the MMIS (see *http://www.cms.gov/MMIS*). Please note that Chapter 11 of the State Medicaid Manual can be accessed electronically at *http://www.cms.gov/Manuals/PBM/itemdetail.asp?filterType=none&filterByDID=-99&sortByDID=1&sortOrder=ascending&itemID=CMS021927.*

In summary, we are making no revisions to regulation text as a result of these comments.

*Comment:* Several commenters suggested that CMS provide educational materials to ensure consumers get individualized assistance and have their questions answered to assure enrollment in Medicaid and the Exchanges.

*Response:* We believe this comment addresses the actual program instructions and policy requirements for eligibility systems, and not the information technology solutions that will be needed for the systems themselves. Our requirements regarding these matters will be established in separate rulemaking.

*Comment:* Commenters also requested that CMS issue "Frequently Asked Questions," establishing a direct contact line for assistance, make available a complete contact list of all of the States and their designated person/representatives, and develop a Webpage/module to the existing Web site that will use this information and any ongoing data exchange information for the State. Commenters further recommended that CMS Regional Offices be fully trained and educated on the regulations and standards.

*Response:* We will consider these recommendations as we begin implementation of this final rule. We expect to provide numerous venues for sharing of information, including conferences, information posted to the CMS.gov Web site, letters, program memoranda, and training materials. The final rule and additional IT guidance will provide information regarding funding standards and conditions. We expect to release additional guidance on performance matrices. We are currently exploring several approaches to expedite the APD process and will be providing guidance on this process soon after publication of this final rule.

Additionally, we have recently awarded seven cooperative agreements to help a group of "Early Innovator" States design and implement the IT infrastructure needed to operate Exchanges. We expect to share information among these Innovator States and, as Exchanges are being developed, we expect to share information from these Innovator States with other States as well through the use of the CMS.gov Web site, conferences, and face-to-face meetings.

*C. Public Feedback and Suggestions Related to the Seven Standard and Conditions*

*Comment:* Several commenters requested clarification on the standards and conditions, and questioned how progress would be measured. Specifically, several commenters were concerned about our reference at § 433.112(b)(13) to "promoting sharing, leverage, and reuse of Medicaid technologies and systems within and among States." Commenters requested that CMS define "promoting" and specify how States will be required to leverage this information between States. Further, the commenters questioned when CMS will provide States with information regarding "promising State systems that can be leveraged and used by other States." They also questioned how these "promising State systems" will be identified. The commenters noted that it will be important for CMS to provide sufficient time for States to leverage promising systems and qualify for enhanced FFP to fund the development of those Medicaid eligibility systems. Other commenters expressed concern

that to meet the standards and conditions required for the Medicaid eligibility system to qualify for the enhanced funding, significant systems changes will be necessary to integrate Medicaid/CHIP eligibility and develop a single client identifier for all Medicaid and CHIP members to establish seamless coordination for eligibility and enrollment. Some commenters requested that CMS provide clarity on the criteria CMS will use to assess how States have demonstrated compliance with these standards and conditions including what documentation States will be expected to provide.

Several commenters questioned the phrase "seamless coordination." That is, § 433.112(b)(16) requires seamless Medicaid coordination and integration between Medicaid eligibility systems and the Exchange, allowing for interoperability with the Exchanges, and other health information systems. The required interoperability would involve the exchange of eligibility and enrollment status to the health information system, however, the rule did not specify the health information being exchanged among the eligibility and enrollment systems. The commenters believed it would be important for CMS to provide additional guidance on the type of data to be exchanged between eligibility and enrollment systems and other health information systems; thus, the commenters requested a definition of "seamless coordination." Additionally, the commenters requested that CMS provide clarity around whether other programs, such as the Supplemental Nutrition Assistance Program and the Temporary Assistance for Needy Families Program, are considered part of CMS' vision for "seamless coordination" and whether enhanced Medicaid funds would be used to make related changes to eligibility systems for these programs as well.

One commenter suggested that we add stronger language to the list of standards and conditions in § 433.112(b) consistent with the preamble language included in the proposed rule regarding the emphasis on the customer experience. Specifically, the commenter stated CMS references the goal of creating an ecosystem designed to deliver person- and citizen-centric services and benefits. The commenter requested similar language be added in regulations text.

Numerous commenters were supportive of our proposed standards and conditions. Specifically, several commenters have indicated they welcome our efforts to identify "promising State systems" that can be leveraged and used by other States. Commenters indicated that they support our perspective that State eligibility and enrollment systems must be conceived of as contributing to a "system of systems." To achieve interconnected, functional systems in time to implement the Affordable Care Act, States must leverage existing systems to the greatest extent possible and successfully connect across silos. Commenters further stated that CMS should develop a repository or method of sharing information and support the development of reference applications. Additionally, commenters stated CMS should establish a means for communication between agencies at the Federal level in a manner that can be replicated at the State level. The commenters also stated that CMS should also provide support to those States that choose to "phase in" some of the changes, to ensure that they can proceed while also receiving enhanced funds. Additionally, the commenters requested that CMS should consider the MITA governance model for disseminating more detailed specifications for the standards and conditions; that is, the MITA governance model which includes the Business, Information, and Technical Review Boards, organized to support the MITA model for review, approval, and adoption of national standards.

*Response:* All of these comments are specific to § 433.112 and § 433.116 in which we have required that to receive enhanced funding for development, design, installation or enhancement of mechanized claims processing and information retrieval systems and operation of such systems, the standards and conditions specified in § 433.112(b)(10) through (16) must be met. The standards and conditions are prescriptive in nature; we did, however, recognize that for State systems to meet these standards and conditions, it would be necessary to provide additional guidance that clearly articulates our criteria for meeting these standards and conditions, the performance measures that we will use to ensure that State systems are complying with these standards and conditions, and the collaboration efforts we will take with CCIIO and other human services programs.

As mentioned previously, we released several guidance materials last year including the proposed rule and the IT guidance version 1.0, and we are committed to releasing additional guidance in the near future which will detail our criteria for ensuring compliance with the standards and conditions. States should consider that we will be interested in partnering with them to ensure that they are making progress and meeting measurable goals. We consider that States may progress in several phases and ensure compliance by meeting goals along the way. Some examples that States may wish to consider in meeting the standards and conditions would be (1) That States should supply roadmaps for major improvements in current systems based on "as/is" MITA assessments and demonstrate how they will increase in MITA maturity by at least one maturity level; (2) States should identify how they plan to achieve full MITA maturity and in what timeframe; (3) States should ensure that their business architecture conforms to concept of operation and business process models distributed by CMS for specific business functions, or identify divergences to CMS; and (4) States should use a business rules engine which is maintained and operated separate from transactional programming language, which allow for modification and updates on an emergency as well as a regularly scheduled (at least quarterly) change control process.

Additionally, we will be releasing IT guidance version 2.0 soon and we will be releasing future versions of IT guidance, as the January 1, 2014 deadline approaches. We will also be issuing guidance surrounding APDs. We continue to work with the Early Innovator grant awardees to ensure that State "early innovator" systems will meet the goal of seamless coordination with the Exchange. Furthermore, we continue to provide technical assistance and support to States through several vehicles including CMS State calls, State workgroups, and conferences. We will convene an annual MMIS conference in which States can share their experiences and provide feedback and request assistance regarding issues surrounding the implementation of the Affordable Care Act. We have committed to providing leadership and technical assistance in not only developing national standards and conditions but in ensuring systems transformation will provide that the goals of the Affordable Care Act goals can be met. That is, with systems transformation, States can meet coverage goals, minimize duplication, ensure effective reuse of infrastructure and applications, produce seamlessness for consumers, and ensure accuracy of program placements.

In terms of our plans for use of the MITA governance model which includes the Business, Information, and Technical Review Boards, organized to support the MITA model for review, approval and adoption of national

standards, it should be noted that the standards and conditions were developed considering many perspectives; that is, the Office of the National Coordinator's standards for enrollment, the HIPAA standards for privacy and security, the Office of Civil Right's views on the Rehabilitation Act and other accessibility standards, other Federal government agencies, States and other stakeholders.

*Comment:* Several commenters requested that we promote transparency and provide opportunities for beneficiary input since the proposed § 433.112(b)(14) would require effective communications with providers, beneficiaries, and the public. The commenters believed that States should be required to consult with beneficiaries, advocates, provider groups, including safety net providers such as Federally Qualified Health Centers, and public workers as they plan their new or improved eligibility systems; to make public copies of the business rules used to determine the decisions on eligibility that will be made by their new systems; and to gather data directly from beneficiaries on their experiences with eligibility determinations (for example, via field-tested procedures such as focus groups or meetings with beneficiaries or low-income advocates) on a periodic basis. Additionally, commenters believed that States must demonstrate that their modernized eligibility systems produce communications with beneficiaries (regardless of whether they are distributed through the mail, on-line, or through other alternative means) that are appropriate for their literacy level and consider the needs of people with disabilities. Commenters believed that policies regarding notices help ensure user-friendly notices which should include involvement of stakeholders, such as beneficiaries. Similarly, the commenters believed that CMS should actively solicit and include data on beneficiaries' perspectives when it conducts its periodic reviews of State's eligibility systems. Lastly, commenters believed that this standard and condition will be difficult to measure, and therefore, should include definable metrics.

*Response:* We believe it is wise for States to consult with their stakeholders as they implement the Affordable Care Act, and in developing business process models and technology roadmaps. While we do not intend to set Federal requirements regarding consultation in this rule and specific to this activity, we do note that other eligibility policy rulemaking may address this issue. One of our standards and conditions specifically states the expectation that business rules should be maintained in human readable form; we agree with the recommendations of the HIT Policy and Standards Committees considering the requirements of section 1561 of the Affordable Care Act that such business rules should be submitted and maintained in a common repository, and are designing approaches to support that activity. These rules will be available to the public to the fullest extent possible and practicable, and we urge States to make their business rules public on the same basis. As for the request that we define the metrics that will be used in periodic reviews of State systems, such metrics will be published in a subsequent notice or notices. We will consider the suggestion to add beneficiary feedback and user experience in these measures.

*Comment:* One commenter questioned if the standards and conditions for Medicaid eligibility systems apply also to MMISs and claims adjudication and whether States have to meet the standards and conditions for MMISs to collect the enhanced FFP.

*Response:* Yes, under our proposed and final regulations, a State's entire MMIS (including its eligibility determination system) will be required to comply with all of the standards and conditions outlined in § 433.112. Please see our proposed rule (75 FR 68585) where we clarify that we were proposing standards and conditions that would apply to both "traditional claims processing systems, as well as eligibility systems to be eligible for the enhanced match."

We are making no further additions to this section of the final rule.

*Comment:* Several commenters requested that CMS ensure eligibility systems comply with all civil rights laws and provide beneficiaries with the opportunity to secure information in a culturally and linguistically appropriate manner. Commenters requested that CMS ensure that the experiences of people with disabilities are considered when CMS conducts its periodic reviews of the system. In addition, commenters believed that CMS should more clearly delineate that eligibility systems must be in compliance with all civil rights protections based on race, color, and national origin and be designed in a culturally and linguistically appropriate manner. Some commenters expressed concern regarding eligible children in immigrant families and individuals with limited English proficiency and the difficulties they experience in communicating with public assistance caseworkers and in navigating the Medicaid application process in general. Commenters suggested that new systems and/or modifications to current systems address these needs. Additionally, commenters suggest that the eligibility systems qualifying for the enhanced match should be in compliance with Title VI of the Civil Rights Act of 1964, section 1557 of the Affordable Care Act, and all related rules, regulations and guidance, including the Department of Justice's policy document, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons."

*Response:* While we believe the majority of these comments address determinations of eligibility, but are not specifically addressed to the actual systems technical requirements that are the subject of our proposed and final rules, we wish to clarify that we are requiring that States meet the standards and conditions outlined in § 433.112 and that one of the standards and conditions relates to effective communication with beneficiaries. States should consider that State systems should provide a 21st Century customer experience for all individuals and should provide for person-centric outreach, eligibility, and enrollment. In terms of determining eligibility, we are happy to work with States regarding assistance to individuals with limited English proficiency in the context of the Department's "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" ("Revised HHS LEP Guidance") accessible at: *http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/policyguidancedocument.html.* Additionally, we note that section 201(b) of the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3, enacted on February 4, 2009) (CHIPRA), added section 1903(a)(2)(E) to the Act to provide increased Federal funding for translation and/or interpretation services provided in connection with the enrollment of, retention of, and use of services by children of families where English is not their primary language. Further, we note that our current regulation at 45 CFR 95.633 holds that State agencies that acquire automated data processing equipment and services are subject to nondiscrimination requirements in 45 CFR parts 90, 84 and 80 (nondiscrimination on the basis of age; disability; and national origin, race or color, respectively). Federal guidance

issued on September 21, 2000 by the Office of Civil Rights and the U.S. Department of Agriculture, Administration for Children and Families and the Health Care Financing Administration (as CMS was formerly known) "Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits" ("Tri-Agency Guidance") also discusses application practices involving the citizen/legal immigrant children of immigrant parents, where questions asked of nonapplicant parents may deter the eligible children from enjoying equal participation in and access to the Medicaid program, thereby potentially violating prohibitions on national origin discrimination in Title VI of the Civil Rights Act). (See *http://www.hhs.gov/ocr/civilrights/resources/specialtopics/tanf/triagencyletter.html*). We also will continue to consider the Institute of Medicine's, 2009 report, "Race, Ethnicity, and Language Data: Standardization for Health Care Quality Improvement," for collecting race, ethnicity, and language. Finally, we expect to address section 1557 of the Affordable Care Act in separate rulemaking.

*Comment:* One commenter suggested that, in considering the standard and condition supporting accurate and timely processing and adjudications/eligibility determinations and effective communications with providers, beneficiaries, and the public, CMS should require States to adopt and implement translated notices and taglines in their eligibility systems to ensure effective communication with limited English proficient applicants and enrollees.

*Response:* We will consider this suggestion as we develop further technical guidance and additional rulemaking. We agree that such practices are worthy of consideration in development activities.

*Comment:* Other commenters expressed concerns regarding current barriers that immigrant families face when applying for public assistance benefits. Some of the barriers identified include the following: Requests for Social Security numbers in the application for non-applicants (that is, undocumented parents that wish to apply on behalf of their United States citizen children), requirements for income verification that nontraditional workers cannot access; and lack of translated forms and interpretive services for individuals with limited English proficiency. Commenters wanted CMS to consider the "Tri-Agency Guidance," discussed in the responses above and require that eligibility determination systems should ensure that individuals can seek all of the benefits for which they or their family members may be eligible without providing unnecessary information.

*Response:* These comments address program and policy requirements, and will be addressed in separate rulemaking.

*Comment:* One commenter wanted CMS to require that State systems determine eligibility for low-income, lawfully present immigrants who are income eligible for Medicaid but whose immigration status makes them ineligible for Federal Medicaid. Specifically, since these individuals would not be eligible for Federal Medicaid but may be eligible for tax credits and Exchange coverage, their applications should be delivered to the Exchange without requiring a new application be submitted, while also providing the applicant clear notice of the status of their application and eligibility.

*Response:* These comments address program and policy requirements, and will be addressed in separate rulemaking. However, we wish to clarify that one standard and condition that must be met to receive enhanced match is seamless coordination and integration with the Exchange.

*Comment:* One commenter requested that CMS require that eligibility determination systems demonstrate how they will comply with sections 1411(e) and (g) of the Affordable Care Act. Section 1411(e) of the Affordable Care Act provides that certain procedures governing verification of eligibility in the Medicaid program, including its due process protections, apply to the Exchange. Section 1411(g) of the Affordable Care Act prohibits unnecessary questions during the application process and limits the use of information provided to the Exchange.

*Response:* These comments address program and policy requirements and will be addressed in separate rulemaking.

*Comment:* One commenter suggested that CMS prohibit States from delegating responsibility to private entities for administering on-line Medicaid eligibility systems without the State accepting the legal responsibility for the system.

*Response:* These comments address program and policy requirements, and will be addressed in separate rulemaking.

*Comment:* A commenter suggested that CMS oversee providing periodic notice to Medicaid beneficiaries for their individual use of medical services, similar to an explanation of benefits (EOB). The commenter believed this would alert Medicaid beneficiaries of fraud, provide treatment history, and could help with redeterminations.

*Response:* While we appreciate the commenter's proposal, such provisions are beyond the scope of the regulation of the final rule. As such, we are making no changes in response to the comment.

*Comment:* The commenters believed that the requirements for timely and accurate processing of claims and adjudications should take into account what is known about the major factors that contribute to system performance, such as system architecture, capacity, and usability by workers. Commenters recommended that decision logic and coding used by eligibility systems be publicly available, and States should be required to have a process for identifying errors and promptly correcting them. Further, the commenters believed that systems should be capable of producing audit trails of decisions.

*Response:* We agree with the commenter. We expect to address these issues when we issue performance metrics in a separate notice.

*Comment:* Several commenters agreed with our requirements that the eligibility determination system produce performance data and reports that contribute to program, evaluation, continuous improvement, and transparency and accountability. The commenters suggested that we further specify the minimum data and performance reports that the system must generate and provide the specifications for these reports and that we should aim for basic program and performance data that is comparable across States and that addresses fundamental program objectives and compliance with key requirements. Commenters believed this information should be posted to Web sites on a regular and timely basis.

*Response:* We agree with the commenters' suggestions, and further clarify the applicability of this standard to all MMISs and not just eligibility systems. While the regulation establishes standards and conditions for transaction data, reports and performance information, additional specifications will be addressed in future subregulatory IT guidance continuously as the January 1, 2014 deadline approaches.

*Comment:* Some commenters stated that the proposed regulatory changes

did not address the needs of Medicare beneficiaries for seamless enrollment to Medicaid, Medicare Savings Programs (MSPs), and Part D low income subsidy (LIS) support older people and people with disabilities.

*Response:* Because the regulatory changes addressed availability of enhanced Federal funding for Medicaid eligibility and enrollment functions and necessary standards, specific provisions impacting enrollment of Medicare recipients was outside the scope of these changes. We would like to note that the newly established Federal Coordinated Health Care Office within CMS, under section 2602 of the Affordable Care Act, will be addressing administrative and regulatory barriers between the Medicare and Medicaid programs in order to better serve this population and it is our belief that improvements in Medicaid eligibility systems will benefit many populations including individuals that are dually eligible for Medicaid and Medicare.

*Comment:* Several commenters noted that the systems should be built in a manner that allows for the effective expansion to other populations.

*Response:* We agree that systems should be built to allow for expansion and leverage, and indeed note that many of the standards and conditions (such as separation of business rules, service-oriented architecture, MITA, etc.) will effectively enable such downstream activities and extensions.

*Comment:* Several commenters believed that CMS standards and conditions should not be the only factor in considering enhanced FFP. For example, commenters believed that Federal leadership, technical assistance, and sub-regulatory guidance should focus on outcomes, as well as the standards and conditions.

*Response:* We concur that Federal (and State) leadership, technical assistance and subregulatory guidance needs to increasingly focus on outcomes. One of the standards and conditions is that systems effectively support and contribute to intended business results. We expect to publish proposed performance measures to help assess compliance with this condition and standard.

*Comment:* Commenters stated that the standard and condition regarding use of a modular, flexible approach to systems development and the separation of business rules from core programming available in human and machine readable formats do not address the maintainability, quality or governance process for changes to the rule sets which they believe have a much greater effect on quality and timeliness than the particular syntax structure of the rules source code.

*Response:* While we do not believe this particular standard and condition will solve all of these challenges, we believe it will significantly reduce maintenance costs and provide added systems flexibility in an environment that is continually evolving. Use of a modular, flexible approach to systems development and the separation of business rules from core programming will allow States to make changes more quickly and efficiently than the situation in place today for most States. We did not attempt to tackle the governance process as we believe that, while very important, the relationship between systems performance and governance can be accommodated using different approaches depending upon the specific conditions within the States.

*Comment:* Several commenters recommended that the separation of business rules from core programming should recommend the use of commercially available business rules engines as opposed to custom or one-of-a-kind implementation of rules processing techniques.

*Response:* One of our standards and conditions focuses on reuse and leveragability. This encourages and even demands consideration of existing solutions, including proprietary and open source solutions, solutions in place at other States, or solutions already in place within a State, before embarking on ground up custom development. We believe this standard and condition adequately ensures that States give due attention and consideration to these options without dictating specific solutions.

*Comment:* Several commenters requested that CMS provide additional guidance on the business rules and specifically requested that since every State will have to meet the business rules requirement, it might be more efficient for CMS to develop a repository of business rules along the lines of the recommendations transmitted to HHS (recommendation 3.2) by the HIT Policy and Standards Committees. States could then adopt and adapt the rules to their own systems.

*Response:* We agree with the commenters that we should provide additional guidance on the business rules. As mentioned, we will continue to provide leadership, technical assistance, and guidance with an eye toward the January 1, 2014 date for required operation of the Exchanges and Medicaid expansion. We have also provided that States should consider other documents that articulate the Department's strategy such as the IT guidance 1.0, Guidance for Exchange and Medicaid Information Technology Systems, and continue to consider such guidance in meeting the requirements of this final rule. As the commenters stated, the HIT Policy and Standards Committees' recommendations should be considered when developing systems that comply with the standard and condition regarding ensuring alignment with, and incorporation of, industry standards: HIPAA security, privacy, and transaction standards; accessibility standards under section 508 of the Rehabilitation Act and compliance with Federal civil rights laws; and standards adopted by Secretary under sections 1104 and 1561 of the Affordable Care Act. Our final rules will require that systems include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. As noted in the IT guidance issued November 30, 2010, State enrollment and eligibility systems already are subject to the program accessibility provisions of section 504 of the Rehabilitation Act, which include an obligation to provide individuals with disabilities an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology. The Department noted in that guidance that a State's Web sites, interactive kiosks, and other information systems addressed by section 508 Standards would be viewed as being in compliance with section 504 if such technologies meet the 508 standards. The Department also encouraged States to follow either the 508 guidelines or guidelines that provider greater accessibility to individuals with disabilities, and noted that States could consult the latest Section 508 guidelines issued by the US Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see *http://www.access-board.gov/sec508/guide/index.htm*). Therefore, we believe that as a result of complying with section 504, many States will already be in or moving toward compliance with the accessibility standards we have included in this final rule.

Lastly, we will be developing a repository of business rules; however, we wish to clarify that it may take some time to populate. Considering the deadlines imposed by the Affordable Care Act, we realize a repository of business rules may be helpful to some States and not others depending upon a given State's IT configuration at the time

it is in need of such rules. We are also considering the possibility of the development of model rules, in a collaborative project with States.

*Comment:* One commenter requested further clarification for the standards and conditions listed in § 433.112(b)(2) that require that the system meet the requirements of Part 11 of the State Medicaid Manual, and § 433.112(b)(12) that require that ensuring alignment with, and incorporation of, industry standards: HIPAA security, privacy, and transaction standards; accessibility standards under section 508 of the Rehabilitation Act and compliance with Federal civil rights laws; and standards adopted by Secretary under sections 1104 and 1561 of the Affordable Care Act. The commenter questioned how CMS will measure compliance with these requirements and if States are found to be out of compliance with this requirement in one area such as a small part of the conversion to ICD–10 coding or revision of the 5010 transaction standards, will States risk losing all enhanced FFP.

*Response:* States are required to meet all conditions for their mechanized claims processing and information retrieval system described in Title XIX of the Act in order to receive FFP. We have the authority to withhold enhanced FFP (or potentially all FFP) for issues of noncompliance with the conditions listed in Title XIX of the Act. It is not our intention to withhold FFP for a frivolous or insubstantial reason. We will give States the opportunity to correct any failures that might endanger FFP. However, a States' continued or persistent failure to adopt industry standards in a timely and compliant way would, in fact, place enhanced FFP at risk. We note that we have outlined a transition period for State MMIS systems to come into compliance that allows for up to 38 months of transition while, at the same time, still ensuring that State systems move expeditiously towards improvement and advanced technology (see our discussion below in section III.E. regarding the transition period).

*D. Public Feedback and Suggestions Related to the APD Process*

*Comment:* Several commenters suggested that the APD process and the Federal organizations responsible for its administration will likely be taxed in an unprecedented way by the volume of work spurred by the implementation of the Health Information Technology for Economic and Clinical Health Act and the Affordable Care Act. The commenters noted that even when applied to projects supporting a single program with a fairly limited set of requirements, the many moving parts in the APD process can work more slowly than anticipated and lead to unforeseen outcomes. Consequently, the commenters suggested that the APD process be reformed. Commenters suggested that CMS make the APD process more transparent and that making the large history of APD documents and outcomes available to other States would promote increased collaboration. Other commenters agreed and indicate that with many States submitting APDs for both eligibility and MMIS systems within the same window of time, the APD approval process will put increased pressure on both State and Federal agencies to meet deadlines. The commenters urged CMS to provide an APD template and to examine ways to expedite the APD process to make sure it can support the critical timeframe and urged CMS to consult with States and the vendor community to identify options to ensure timely approval of APDs. Additionally, commenters recommended that CMS consider the waiver option in 45 CFR 95.627 as a method to streamline the enhanced funding approval process during this time limited availability of enhanced funds. This could allow States to submit alternative approaches to hasten implementation of needed systems changes.

*Response:* On October 28, 2010, HHS released a final rule (75 FR 66319) that introduced a new concept of "high risk" APDs that specified software development as a "high risk" trigger. Additionally, the period for Federal review currently identified in 45 CFR 95.611(d) allows up to 60 days for APD approval, disapproval, or requests for information.

We realize it will be important to conduct APD reviews quickly so as not to delay the projects the States are pursuing. As we are issuing this rule, we are also preparing additional guidance for APDs, and for the governance and collaboration process we will use to work with States to minimize project risk, optimize outcomes, and to ensure successful compliance with the seven standards and conditions added by this final rule. In response to the commenters' suggestions to make APDs more transparent and public, we agree. We are evaluating how, and in what form, to make APDs available as they are submitted.

*E. Issues Related to the Transition Period for Compliance*

*Comment:* One commenter proposed that the regulation not be retroactive to initiatives with an APD already.

*Response:* While not directly suggested here, we believe it is important to clarify that enhanced funding is currently not available for eligibility initiatives that have already been approved by CMS. However, we have provided that States currently receiving enhanced FFP for MMIS have a period of transition to come into compliance with the standards and conditions outlined in this rule. Specifically, for new MMIS development (new APDs requesting 90 percent FFP for design, development, installation, and enhancement), we provide for no transition period. For MMIS development already underway (approved APDs providing 90 percent enhanced FFP), we proposed a 12-month transition period (beginning with the effective date of this final rule) in which to submit an updated Implementation APD (IAPD) detailing how systems would be modified to meet the required conditions and standards. For maintenance and operations of MMIS currently receiving 75 percent FFP, we proposed a 36-month transition period in which to submit an IAPD with plans to upgrade or modify systems to meet the required conditions and standards. Since we are providing that this final rule is effective upon publication, we are revising the transition periods by 2 months (to 14 and 38 months, respectively).

For new MMIS development (new APDs requesting 90 percent FFP for design, development, installation, and enhancement), we will continue to provide for no transition period. For MMIS development already underway (approved APDs providing 90 percent enhanced FFP), we provide for a 14-month transition period (beginning with the effective date of this final rule) in which to submit an updated Implementation APD (IAPD) detailing how systems would be modified to meet the required conditions and standards. For maintenance and operations of MMIS currently receiving 75 percent FFP, we provide for a 38-month transition period (beginning with the effective date of this final rule) in which to submit an IAPD with plans to upgrade or modify systems to meet the required conditions and standards.

Additionally, we have discussed a period of transition to come into compliance with the standards and conditions outlined in this rule for eligibility systems as well. Specifically,

for eligibility systems (currently receiving 50 percent for development and maintenance and operations), we are providing for no transition period for new requests for enhanced funding for eligibility systems. States with eligibility systems currently under development (approved APDs providing 50 percent FFP) can update their APDs to reflect how they would comply with these standards and conditions in order to begin receiving 90 percent FFP. Similarly, eligibility systems currently receiving 50 percent FFP for State expenditures would need to comply with our final standards and conditions to receive a 75-percent FFP.

We are making no change to the transition period for eligibility determination systems.

*Comment:* One commenter questioned whether CMS will impose additional deadlines on States following the submission of an IAPD requesting funding and specifying the plans for updating MMISs within the 36 month (now 38 month) transition period.

*Response:* In the context of this regulation, any more standards and conditions (in addition to the 7 finalized in this rule) would be subject to notice and public comment. Consequently, States would have an opportunity to provide CMS with feedback.

*Comment:* One commenter stated strong objections to the transition period for existing development projects and established MMIS applications for the submission of an IAPD to achieve CMS' proposed new MMIS standards. The commenter believed that this time limitation is extremely burdensome to States at a time when resources are already strapped. The commenter believed the development of an IAPD will require a planning period and this will be occurring at the same time that States are overhauling their eligibility and determination systems. Further, the commenter believed that States are already struggling to meet the HIPAA 5010 and the ICD–10 mandates. The State staff, contractors, and vendors conducting the work on these mandates are the same ones who would be involved in the planning necessary to submit an IAPD and they would be the same ones implementing the changes to the MMIS. The commenter believed the rule requires adherence to standards that don't exist and from the State's perspective the MMIS requirements represent an unfunded mandate. The commenter expressed concern that the requirement to "hurry up and meet" the new standards and conditions will turn current MMISs into "lame duck" systems. The commenter noted that with all States required to undertake major eligibility systems projects, implement 5010 and ICD–10, and already facing impossible budget constraints, now is not the time to mandate onerous new requirements that in many cases require replacement of perfectly workable MMIS systems.

*Response:* In the January 16, 2009 **Federal Register,** HHS published two final rules: The ASC X12 Version 5010, NCPDP Version D.0, NCPDP Version 3.0 (74 FR 3296) and the ICD–10 code sets (74 FR 3328) were published by HHS on January 16, 2009 in 2 separate final rules. These rules are available at www.regulations.gov. In NCPDP Version D.0, NCPDP Version 3.0, HHS adopted ASC X12 Version 5010 and NCPDP Version D.0 for the HIPAA transactions that currently require the use of the ASC X12 Version 4010/4010A and NCPDP Version 5.1 standards. In that rule, HHS also adopts a new standard for Medicaid subrogation for pharmacy claims transactions, known as NCPDP Version 3.0. For Version 5010 and Version D.0, the compliance date for all covered entities is January 1, 2012. This gives the industry enough time to test the standards internally, to ensure that systems have been appropriately updated, and then to test between trading partners before the compliance date. The compliance date for the Medicaid subrogation standard is also January 1, 2012, except for small health plans, which have until January 1, 2013 to come into compliance.

In ICD–10 code sets final rule, HHS modified the standard medical data code sets for coding diagnoses and inpatient hospital procedures by concurrently adopting the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM) for diagnosis coding and the International Classification of Diseases, 10th Revision, Procedural Coding System (ICD–10–PCS) for inpatient hospital procedure coding. These new code sets replace the current International Classification, 9th Revision, Clinical Modification, Volumes 1 and 2 and the International Classification, 9th Revision, Clinical Modification, Volume 3 for diagnosis and procedure codes respectively. The implementation date for ICD–10–CM and ICD–10–PCS is October 1, 2013 for all covered entities. Thus, we believe there has been ample time and ample guidance to States so that they can move towards compliance with these requirements.

We disagree that the new standards and conditions and the timeframe for meeting them represent an "unfunded mandate." We are not imposing any mandate on the State, but rather are creating standards which States will need to meet if they wish to receive an enhanced 90 or 75 percent FFP rate under the Act. States that do not wish to come up to these standards would continue to be eligible for a 50 percent FFP.

Additionally, in considering the deadlines outlined in the Affordable Care Act for operation of the Exchanges and the requirement that Exchanges also determine Medicaid eligibility, we believe, and States have agreed, that the procurement process for projects of the size and scope required to meet the challenges of the Affordable Care Act can take several months to complete. Thus, we considered these challenges and determined it necessary to provide flexibility by instituting a transition period and by providing additional financial support, additional IT guidance, Federal technical assistance, and leadership so that States can design systems that can meet the requirements of the Affordable Care Act.

*Comment:* One commenter questioned whether MMIS upgrades and modifications (as envisioned by a States IAPD) may be phased in over a period of years, so that by a certain end-date, the MMIS is fully compliant, or whether our final rule would require that the IAPD provide that the MMIS actually meet all standards and conditions by the end of the transition period.

*Response:* We believe the commenter is referring to the 36-month (now 38-month) transition period that applies to current MMISs receiving 75 percent FFP for maintenance and operations. For this purpose, States will have up to 38 months to submit an IAPD. This transition period ensures that new systems receiving Federal funding are eventually designed in a manner that results in the most efficient use of technology. In reviewing APDs, we will be considering individual State factors such as budget, schedule and risk, and we will be evaluating the State's proposed timeline and pathway in an effort to ensure full compliance with the standards and conditions at the earliest opportunity.

*F. Comments Regarding CMS' Strategy for Monitoring and Oversight, Including Performance Reviews*

*Comment:* One commenter asked CMS to elaborate on how frequently the agency will perform periodic reviews—such as would reviews occur every 6 months, every year, or less frequently.

*Response:* We are not, at this time, creating specific deadlines for the periodic reviews. As mentioned earlier, large systems transformations will be needed in order to accomplish the

requirements outlined in the Affordable Care Act. As such, we plan to work with States, and as systems are designed and developed, we will be conducting reviews on a continuous basis keeping in mind the January 1, 2014 and December 31, 2015 deadlines. We are making no further revisions to the rule as a result of this comment.

*Comment:* A few commenters supported "the back-end review" of MMIS solutions, including certification and on-going performance monitoring. Many commenters requested to see more explicit details regarding oversight, frequency of reporting, record layout, and the specific performance metrics CMS will use to ensure ongoing successful performance. Other commenters suggested a "modernized" approach to the performance of these activities. Rather than basing the processes on the 30-year old traditional review of output, the commenters suggested focusing on whether "the implementation achieves the business goals that the funding was supposed to accomplish." The commenters believed that aligning these reviews to the goals set forth in the approved planning documents will result in solutions that more closely align with program objectives and will result in substantial reductions in burdens for both State and CMS staff.

Additionally, the commenters requested clarification on whether CMS is considering adopting a modular certification process in order to complement and align with the modular system development process.

*Response:* We appreciate the support for conducting periodic reviews of MMISs. Our performance measures will tie directly to the standards and conditions that are being issued in this final rule, and will be communicated to States through subsequent documents. We intend to publish performance metrics in a **Federal Register** notice, and then allow a period for public comments. The performance results of States and systems will be the primary driver of the periodicity and intensity of any CMS reviews. We also intend to focus reviews on whole systems, modules or components, based on those results.

*Comment:* Many commenters asked that CMS outline the expected timeframe for setting up the performance measures. Commenters believed that the timeframe could potentially impact the timeline for planning, design, and implementation of system enhancements for compliance. The commenters proposed an alignment of standards for ongoing review with standards used to evaluate States' eligibility for enhanced funding, to ensure that proposed systems modifications lead to achieving standards established for ongoing monitoring.

*Response:* As stated above, we intend to publish performance metrics in subsequent notices, with a request for comments. We will consult with States and others prior to publishing metrics. To guide States in their development activities, we will issue a series of documents in concert with or shortly after publication of this rule, including IT Guidance 2.0, sub-regulatory guidance on complying with the seven standards and conditions, and instructions and protocols for APD submission and review. MITA 3.0 guidance will follow later this year. We emphasize to States that we expect to see a highly iterative and fluid approach to business process development, blueprinting, specifications, and development as we approach implementation of the coverage expansions and eligibility simplifications within the Affordable Care Act. We will give strong recognition of the iterative and collaborative approach and we intend to support Affordable Care Act implementation as we enforce the standards and conditions in this rule.

*G. Issues Related to Partial Systems Improvements or Modernizations*

*Comment:* One commenter recommended that the requirement for tracking ongoing progress should be eliminated for enhancement(s) made to address a specific requirement. These may be reviewed for compliance, once after implementation of enhancement, and subsequently any time changes are made that would impact the initial enhancement.

*Response:* We disagree with the commenter. To receive enhanced funding, State systems must meet with the standards and conditions outlined in this rule. We expect that a key outcome of our technology investments is a much higher degree of interaction and interoperability in order to maximize value and minimize burden and costs on providers, beneficiaries, and States. Additionally, we wish to ensure that enhanced FFP is approved only when infrastructure and application projects maximize the extent to which they utilize current technology development and deployment practices and produce reliable business outputs and outcomes. Further, MITA principles also require ongoing improvement—such that the system continues to meet certain milestones. Thus, States making enhancements to address a specific requirement would, in accordance with MITA principles, have to continue to look to industry standards to ensure that the enhancement is evolving along with such standards. Tracking ongoing progress is critical to success.

*H. Specific Issues by Regulatory Provision*

*Comment:* One commenter noted that CMS has removed the authority in § 433.110(a)(2)(iii) and § 433.130 to provide for waivers of conditions of approval, conditions of re-approval, and FFP reductions in certain circumstances. The commenter expressed concern that removal of the current waiver flexibility to take into account State-specific circumstances will increase the potential for loss of enhanced Federal match with catastrophic budget impact to States.

*Response:* We agree with the commenter that language in sections 433.110(a)(2)(iii) and 433.130 is removed. These sections implemented section 1903(r) of the Act which requires reductions in FFP due to a State under section 1903(a) of the Act if a State fails to meet certain deadlines for operating a mechanized claims processing and information retrieval systems or if the system fails to meet certain conditions of approval or re-approval. We determined it is necessary to delete the waiver authority in § 433.110(a)(2)(iii) and § 433.130 since it is redundant and we noted in the preamble of the proposed rule to make conforming changes to 42 CFR part 433, subpart C in an effort to remove redundancy. We have, however, retained the authority in § 433.131 which provides for waivers of an FFP reduction in certain circumstances if the State is unable to comply with the conditions of approval or of reapproval.

*Comment:* One commenter requests that we clarify whether the intent of striking § 433.111(b)(3) includes deleting approved enhancements to mechanized systems, including claims processing and information retrieval systems, rather than merely removing the exclusion for eligibility determination systems.

*Response:* To clarify the striking of § 433.111(b)(3), we intended to specifically remove the language indicating that eligibility determination systems are not part of mechanized claims processing and information retrieval systems. However, in doing so, we realized that some may question our removal of the language in § 433.111(b)(3) relating to enhancements; and since we agree with the commenter that enhancements are

necessary to ensure that technology continues to improve, we are revising the regulation text in this final rule to include this language relating to enhancements.

*Comment:* One commenter remarked that in § 433.112, we have linked paragraph (a) with paragraph (c) thus creating, in the commenter's view, the elimination of the current opportunity for enhanced FFP at 90 percent for MMIS development and enhancements. The commenter believed that we have failed to recognize the true status of States' claims processing systems and future evolution.

*Response:* We disagree with the commenter. While States will continue to have an opportunity to receive enhanced FFP at 90 percent for most MMIS development and enhancements, assuming such systems meet the regulatory standards and conditions, § 433.112(c) simply indicates the more limited rule for eligibility determination systems that funding at enhanced rates will not be available for the design, development, installation or enhancement of such State eligibility determination systems after December 31, 2015. However, this deadline applies only to the eligibility component of MMIS, not the entire MMIS.

*Comment:* One commenter is concerned that we have not clearly defined the regulatory requirements specified in § 433.112(b)(10), (11), and (13) through (16) and that these regulatory requirements lack explicit and nationally-recognized standards for measuring achievement.

*Response:* In proposing the 7 standards and conditions that States must meet in order to receive enhanced funding, we included information as to the importance of each of the standards and conditions. In addition, in some cases, we provided examples of how we will ensure that State systems meet the standards and conditions. For example, for the standard and condition that speaks to promoting sharing, leverage, and reuse of Medicaid technologies and systems within and among States, we specified that we would examine APDs to ensure that States make appropriate use and reuse of components and technologies available off the shelf or with minimal customization to maximize return on investment and minimize project risk. Further, we indicated in the proposed rule that we intend to issue further interpretations regarding each standard. In our preamble, we also provided an example of measurement; that is; we indicated that we would measure how a system meets requirements for providing notices to beneficiaries, claims, and applications and renewals, proper determinations, and experience with appeals, interoperability with Exchanges, as well as traditional systems standards such as availability and down time. Thus, while we have provided detailed information regarding the standards and conditions, we also recognize that future interpretations will be forthcoming. We intend to ensure that any such interpretations, as well as performance metrics, are developed with input from the State agencies. As stated above, for performance measures, we will publish such measures in a **Federal Register** notice and provide for a period of comment.

*Comment:* One commenter requested that we reinstate the stepped down reduction in FFP that was outlined in § 433.113 prior to our proposed rule and eliminate the 25 percent reduction proposed in § 433.119 should there be a decertification action.

*Response:* We do not believe we have the authority to provide for the stepped down reductions in FFP as previously outlined in § 433.113. The specific authority to provide such stepped down reductions that previously existed in section 1903(r) of the Act was repealed by section 4753 of BBA. However, as explained elsewhere in preamble, we do have the authority to, on the basis of our review, determine that a system is no longer leading to more effective, efficient, or economical operation of the State plan, under section 1903(a)(3) of the Act, and therefore, to remove the enhanced FFP.

*Comment:* One commenter asks CMS to reconsider the proposed limit on the opportunity for enhanced funding at 75 percent for eligibility determination systems operation to only those systems approved prior to December 31, 2015. The commenter believed that the new standards and conditions listed in § 433.112 coupled with the typical timeframes for design, development, and implementation make it unlikely that the majority of States will achieve approval by the specified date.

*Response:* We disagree with the commenter. As stated elsewhere in this preamble, the Affordable Care Act requires that eligibility changes be in place by January 1, 2014, and we have already provided an additional 2 years beyond that date for States to meet the standards and conditions for enhanced funding for design, development, or installation.

*Comment:* One commenter requested that CMS reinstate the criteria previously listed in § 433.120(b) indicating that any reductions in FFP would be tied to a reasoned determination that a system is failing to meet certification requirements in a significant manner.

*Response:* First, we are clarifying that any deficiencies found as the result of future reviews would be subject to a period of corrective action before making a determination that enhanced FFP would be discontinued. Additionally, while we will be issuing future guidance regarding the specific performance review measurements, we do agree that it is likely that enhanced FFP would only be discontinued in situations where the system is failing to meet the standards and conditions in a significant manner.

*I. Issues Related to the Regulatory Impact Analysis, Including the Cost Estimates, and Information Collection*

*Comment:* One commenter stated that CMS underestimated States' eligibility system replacement costs. The commenter pointed out that the impact analysis assumes that new systems, on average, would cost $50 million over 3 years for each State and that assumption includes design, development, and implementation. The commenter indicated that one State's plan to modernize/replace their Medicaid Eligibility System cost a total of $200 million over the course of 4 years.

*Response:* In the Regulatory Impact Analysis of the proposed rule, we outlined the uncertainty surrounding the assumptions and associated cost estimates relating to the expenditures for the necessary technology, innovation, and implementation requirements. This uncertainty not only included recognizing the difficulty surrounding the extent of the necessary technology advancements, but how these changes would affect State systems. We concluded that time, money, resources, and considerable effort would be necessary for States to make changes to their current technology. Our estimates also accounted for the additional uncertainty surrounding the rate of adoption for States to make necessary changes in the proposed rule. As a result of the uncertainty in our assumptions surrounding State behavior, including adoption rates and the associated costs for implementing new systems within the timeframe assessed, we presented our concluding aggregate cost estimates within a 25 percent lower and upper range. This allowed us to reflect a larger cost estimate range, so that both States throughout the lower to higher bands of expenditures may be reflected.

In further substantiating the initial estimates, our experience regarding State costs for eligibility systems is

based on considerably larger integrated systems involving SNAP and ACF programs, of which Medicaid typically has a 30 to 45 percent share based on how States choose to allocate costs. Thus, we recognize that total system costs may be higher than the $50 million (total computable Medicaid costs) originally estimated, but the specific Medicaid share of those costs reflects a portion of the total; that is, on average $50 million (total computable). The focus of our estimates for this rule is strictly Medicaid costs and not total system costs. Furthermore, we recognize larger States may have higher costs, while smaller States may experience lower costs. The $50 million estimate is our best effort to estimate the midpoint for the Medicaid-only costs, with the estimated majority of States experiencing costs somewhere within the 25 percent lower to upper cost range provided in the regulatory impact analysis. As a result, we are not making revisions to the Regulatory Impact Analysis or associated cost estimates as a result of this comment.

*Comment:* One commenter noted that we indicate there are no additional information collection requirements; however, the commenter questioned the evolving certification requirements and asked if this means that additional information collection will be necessary.

*Response:* We considered that additional data may be necessary in terms of the performance measurements and compliance with our standards and conditions. However, we believe this process will be part and parcel to the APD process; that is, we believe that States will submit information to us as part of the APDs. We indicated in our proposed rule that States already submit to us for review and approval APDs for funding for automated data processing in accordance with Federal regulations at 45 CFR Part 95, Subpart F. However, we agree with the commenter that any new APDs for Medicaid systems that perform eligibility and enrollment functions will need to address the requirements of this final rule. Consequently, we developed an expedited APD checklist specific to the purposes of this rule and submitted to OMB for review and approval the burden associated with the information collection.

## IV. Provisions of the Final Regulations

After consideration of the comments reviewed and further analysis of specific issues, with a few modifications, we are adopting the provisions of the November 8, 2010 proposed rule as final.

Specifically, we are finalizing the following provisions:

### *A. Medicaid Eligibility Determinations*

In § 433.112, we have revised the definitions such that Medicaid eligibility determinations will be considered "claims" of eligibility and Medicaid eligibility determination systems are potentially eligible for the enhanced 90 and 75 percent FFP under section 1903(a)(3) of the Act. This final policy will apply only upon the effective date of this final rule. Additionally, enhanced FFP does not eliminate the responsibility of States to ensure compliance with cost allocation principles outlined in OMB Circular A–87.

Further, enhanced FFP at the 90 percent rate for design, development, installation, or enhancement of eligibility determination systems will be available for State expenditures only through calendar year (CY) 2015, even if work on approved APDs continues after 2015. Enhanced FFP at the 75 percent rate to maintain and operate systems that previously qualified for 90 percent FFP will be available after 2015 if those systems continue to meet the requirements specified in this final rule.

Additionally, enhanced funding at 75 percent to maintain and operate systems meeting the standards and conditions is available prior to December 31, 2015, (but after the effective date of any final rule), in recognition of the fact that some States may have already invested in improvements that will allow systems to qualify without the need for additional enhanced development, design, installation or enhancement funding. For any State receiving enhanced FFP at 90 percent or 75 percent prior to December 31, 2015, systems must continue to meet the requirements, standards and conditions specified in this rule in order to continue receiving 75 percent enhanced funding after December 31, 2015.

We are limiting the timeframe for which enhanced 90 percent FFP is available for design, development, installation or enhancement of automated eligibility systems because we view the changes made by the Affordable Care Act for the new eligibility rules in Medicaid as requiring an immediate, substantial commitment to, and investment in, technologies. In order words, we expect that changes to State systems will be completed with the start of the new Affordable Care Act provisions and support the operation of Exchanges on January 1, 2014. However, we realize that States may need to make additional changes to State systems to provide for additional functionality in support of Medicaid eligibility rule modifications. Thus, we are providing for an additional 2 years of 90 percent enhanced FFP so that States' systems would have additional time to ensure the peak performance of their systems.

States would need to incur costs for goods and services furnished no later than December 31, 2015 to receive 90 percent FFP for the design, development, installation or enhancement of an eligibility determination system. This would mean that if an amount has been obligated by December 31, 2015, but the good or service has not yet been furnished by that date, then such expenditure would not be eligible for enhanced FFP. Further, we are limiting the availability of 75 percent enhanced funding for maintenance and operations to those eligibility determination systems that have complied with the standards and conditions in this rule by December 31, 2015.

### *B. Standards and Conditions for Receiving Enhanced Funding*

Under sections 1903(a)(3)(A)(i) and 1903(a)(3)(B) of the Act, we are delineating standards and conditions that must be met by States in order for their Medicaid technology investments (including traditional claims processing systems, as well as eligibility systems) to be eligible for the enhanced match. These authorities provide that the enhanced FFP of 90 percent is not available unless the Secretary determines that a system is "likely to provide more efficient, economical, and effective administration of the plan" as described in section 1903(a)(3)(A)(i) of the Act. Similarly, section 1903(a)(3)(B) of the Act specifies that enhanced FFP of 75 percent is not available for maintenance or operations unless the system is "of the type described in subparagraph (A)(i)" and is approved by the Secretary.

We define MITA at § 433.111(c) and we build on the work of MITA by codifying that enhanced FFP (either at the 90 percent rate for design, development, installation or enhancement; or at the 75 percent rate for maintenance and operations) is only available when certain standards and conditions are met. Specifically, we articulate a set of standards and conditions that States must commit to in order to receive enhanced FFP:

- Use of a modular, flexible approach to systems development, including the use of open interfaces and exposed application programming interfaces; the separation of business rules from core programming; and the availability of

business rules in both human and machine readable formats.

• Align to and advance increasingly in MITA maturity for business, architecture, and data.

• Ensure alignment with, and incorporation of, industry standards: the Health Insurance Portability and Accountability Act of 1996 (HIPAA) security, privacy and transaction standards; accessibility standards established under section 508 of the Rehabilitation Act, or standards that provide greater accessibility for individuals with disabilities, and compliance with Federal civil rights laws; standards adopted by the Secretary under section 1104 of the Affordable Care Act; and standards and protocols adopted by the Secretary under section 1561 of the Affordable Care Act.

• Promote sharing, leverage, and reuse of Medicaid technologies and systems within and among States.

• Support accurate and timely processing of claims (including claims of eligibility), adjudications, and effective communications with providers, beneficiaries, and the public.

• Produce transaction data, reports, and performance information that would contribute to program evaluation, continuous improvement in business operations, and transparency and accountability.

• Ensure seamless coordination and integration with the Exchange (whether run by the State or Federal government), and allow interoperability with health information exchanges, public health agencies, human services programs, and community organizations providing outreach and enrollment assistance services.

To ensure that States have an opportunity to come into compliance with these requirements, the States currently receiving enhanced FFP for MMIS will have a period of transition to come into compliance with the standards and conditions listed above. Under our schedule, the following transition periods will apply:

• For new MMIS development (new APDs requesting 90 percent FFP for design, development, installation, and enhancement): No transition period.

• For MMIS development already underway (approved APDs providing 90 percent enhanced FFP): 14-month transition period (beginning with the effective date of this final rule) in which to submit an updated Implementation APD (IAPD) detailing how systems will be modified to meet the required conditions and standards.

• For maintenance and operations of MMIS currently receiving 75 percent FFP: 38-month transition period (beginning with the effective date of this final rule) in which to submit an IAPD with plans to upgrade or modify systems to meet the required conditions and standards.

• Eligibility systems (currently receiving 50 percent for development and maintenance and operations): Because eligibility systems are not currently receiving enhanced funding, there is no transition period and no need for a transition period for new requests for enhanced funding for eligibility systems. Any APDs requesting enhanced funding for eligibility systems funding following the effective date of this regulation will have to meet the standards and conditions above. States with eligibility systems currently under development (approved APDs providing 50 percent FFP) can update their APDs to reflect how they will comply with these standards and conditions in order to begin receiving 90 percent FFP. Similarly, eligibility systems currently receiving 50 percent FFP for State expenditures will need to comply with our final standards and conditions to receive a 75-percent FFP.

Our standards and conditions will be enforced through both front-end and back-end review processes. Front-end review will entail APD review and prior approval processes where States apply for enhanced match before entering into IT investment projects. Back-end reviews will entail certifications of the systems capabilities, as well as ongoing performance monitoring.

*C. Reviews and Performance Monitoring of MMISs*

In this final rule, we are also reinstituting periodic performance reviews of MMISs (including eligibility determination systems receiving enhanced funding). Our reviews will focus on performance measures we set to determine whether States are meeting the standards and conditions in this final rule. For example, we will measure how a system meets requirements for providing notices to beneficiaries, claims and applications intake and acceptance, efficient timely and accurate processing of claims, applications and renewals, proper determinations, and experience with appeals, interoperability with Exchanges, as well as traditional systems standards such as availability and down time. We expect to see such data automatically generated by the systems in which we invest, with standards and conditions established in consultation with States and stakeholders, and based on industry experience.

Additionally, we will evaluate systems based upon their interoperability with other Federal and State health programs. Thus, in operating their systems, States will need to ensure that they consult documents articulating the Department's strategy on interoperability, such as the Guidance for Exchange and Medicaid Information Technology Systems.

Any failures or deficiencies will be the basis for investigation and opportunity for corrective action before making a determination that enhanced FFP will be discontinued.

To reflect the passage of the BBA, we have modified § 433.119 through § 433.121 to eliminate any reference to Systems Performance Reviews (SPRs) but, more importantly, to reflect the requirements for performance monitoring and review.

*D. Partial Systems Improvements or Modernizations*

As discussed in response to comment, as well as in the proposed rule, in referring to "system" or "technology," we recognize that States will likely use a system of systems in support of MMIS functions. States submitting partial system updates will need to submit and have an approved roadmap for achieving full compliance with the standards and conditions in the regulation. We will track progress against an approved roadmap when determining if system updates meet the standards and conditions for the enhanced match. For enhancements intended to satisfy a specific requirement or to address a compliance issue, for example, ICD–10 or implementation of the National Correct Coding Initiative, our final policy is that States making enhancements to address a specific requirement would have to continue to make improvements and continue to look to industry standards to ensure that the enhancement is evolving along with such standards.

*E. Changes to Federal Regulations at 42 CFR Part 433 Subpart C—Mechanized Claims Processing and Information Retrieval Systems*

We are deleting § 433.113 (referencing the need to have mechanized claims processing and information retrieval systems by a certain deadline, or face reduced Federal Medicaid funds as a consequence) and § 433.130 (referencing waiver provisions for qualifying States with a certain 1976 population and expenditures). We have also deleted various cross-references to these provisions.

We have also made conforming amendments to various provisions in part 433, subpart C to conform to our final policy that eligibility determination systems may now be considered part of mechanized claims processing and information retrieval systems. We have eliminated the statement in the current § 433.111(b)(3) that "Eligibility determination systems are not part of mechanized claims processing and information retrieval systems or enhancements to those systems." In response to comments we have reinserted language in § 433.111(b)(3) to include information regarding approved enhancements to mechanized systems, including claims processing and information retrieval systems. We have also eliminated the provision at § 433.112(c), which currently states that "eligibility determination systems are not part of mechanized claims processing and information retrieval systems and are not eligible for 75 percent FFP under this Subpart. These systems are also not eligible for 90 percent FFP for any APD approved after November 13, 1989." We have replaced this with language making clear that 90 percent FFP for the design, development, installation, or enhancement of an eligibility determination system is available only before December 31, 2015, even if work on an approved APD continues after 2015. In this final rule, we also are amending the regulation to make clear that States will need to incur costs for goods and services furnished no later than December 31, 2015 to receive 90 percent FFP for the design, development, installation, or enhancement of an eligibility determination system. We are also codifying in this final rule that FFP at 75 percent is not available for eligibility determination systems that do not meet the standards and conditions by December 31, 2015.

States will be required to supply information and demonstrate consideration of the standards and conditions to CMS for review and approval and as part of the APD before we will grant approval of enhanced funding. We will scrutinize all investments and will decline to approve enhanced funding (resulting in 50 percent FFP) that do not demonstrate careful consideration and application of these standards and conditions.

## V. Waiver of Delay in Effective Date

Section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)) ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication. In addition, the Congressional Review Act at 5 U.S.C. 801, requires a major rule to take effect no earlier than 60 days after the date the rule is published in the **Federal Register**. Both the 30- and 60-day delays in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 8 U.S.C. 808(2).

We find that it is both unnecessary and contrary to the public interest to delay the effective date of this final rule. This rule is altering the definition of a mechanized claims processing and information retrieval system, such that the definition will now include automated eligibility determination systems. As a result, enhanced Federal funding should be available to States that seek to alter their systems, or that have already altered their systems, in a manner that meets all of our requirements.

We believe it is in the public interest to immediately ensure the availability of such enhanced funding, so that States are able to begin the process of altering their systems as soon as possible. States will be required to have systems in place that comply with the Affordable Care Act by the beginning of 2014, and the sooner States are able to start relying on Federal funding to begin modernizing their systems, the more likely they will be able to meet these deadlines. In addition, at least a few States already have systems that would comply with all of our standards and conditions. Therefore, an immediate effective date would allow such States to receive funding immediately to support such modernization efforts. For these reasons, it would be contrary to the public interest to delay the availability of enhanced funding.

In addition, given that States will have a period of time to come into compliance with the terms and conditions we have promulgated in this final rule, it is unnecessary to delay an effective date, as an immediate effective date will not require any State to immediately alter its systems. Rather, for eligibility determination systems, the rule simply conditions enhanced funding on States being in compliance with the terms and conditions of this final rule—but there is no immediate requirement that systems change. For current MMISs already receiving enhanced funding, the rule does impose new terms and conditions to continue the receipt of such enhanced funding, but a transition period is built in to allow States time to comply and this transition period has been extended by 2 months to account for the immediate effective date in this final rule.

For the above reasons, we find good cause, based on both public interest, and lack of necessity for a delayed effective date, to waive both the 30- and 60-day delayed effective dates and to make this rule effective upon publication.

## VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The changes specified in this final rule impose new reporting, recordkeeping or disclosure requirements for submission of APDs. Initially, we indicated that States already submit to us for review and approval APDs for funding for automated data processing in accordance with Federal regulations at 45 CFR Part 95, Subpart F. We noted, however, in section III.I. of this final rule that we received one comment on the burden associated with this final rule. As a result of review of this comment and the development of a new expedited ADP checklist specific to the purposes of this final rule, we are seeking emergency review and approval from OMB in order for the expedited APD checklist to be available to States at the time this rule becomes effective. In addition, we are soliciting public comments on the information collections and associated burden contained in this final rule.

An Expedited Eligibility and Enrollment (E&E)—APD checklist (CMS–10385; OMB number 0938–NEW) has been developed for States that participate in Early Innovator grants or Establishment grants to complete and submit to CMS for review and prior approval in order to receive enhanced

federal funding for Medicaid Information Technology (IT) system(s) projects related to eligibility and enrollment functions.

Specifically, this checklist:

(1) Guides States in obtaining prior approval to secure 90 percent Federal financial participation (FFP) for the design, development, implementation (DDI), and/or enhancements of a system(s); and 75 percent FFP for maintenance and operations [42 CFR § 433 Subpart C].

(2) Contains Seven Standards & Conditions that the State's APD must meet.

(3) Contains Federal requirements for both Planning and Implementation activities of an APD [45 CFR part 95 subpart F (Revised October 28, 2010)].

(4) Streamlines the process for States by requiring fewer documents, as well as potentially shortening the review timeframe for CMS, and if applicable, other Agencies, of system projects related to the Affordable Care Act. Although Federal Regulations allow up to 60 days for APD approvals, our goal is to provide an approval within 30 business days upon receipt.

We estimate that there are 56 State Medicaid programs (including the District of Columbia and 5 territories) and that it will take approximately 5 hours for each State program to complete the APD template with the requested information which in aggregate will take 280 total hours to complete one checklist, and 840 total hours to complete the anticipated average response of 3 per Medicaid program. We reviewed 2009 National Labor Statistics and speculate that the job role of Management Analyst (13–1111) with a mean hourly wage estimate rate of $40.70 would be completing the data for the template. Based on these estimates, the total cost to complete the APD template would be $2,279.20 (15 hours × hourly rate of 40.70 = 610.50 × 56 programs = $34,188.00). We acknowledge that there are uncertainties regarding these burden estimates.

ESTIMATED ANNUAL REPORTING BURDEN REPORTING

[States]

| | Section | Estimated number of respondents | Frequency of responses | Average number of annual responses | Average burden per response (hours) | Annual burden hours |
|---|---|---|---|---|---|---|
| States that participate in Early Innovator grants or Establishment grants complete expedited checklist. | 42 CFR Part 433 Subpart C and 45 CFR Part 95 Subpart F. | 56 | 3 | 168 | 5 | 840 |
| Total | | 56 | 3 | 168 | 5 | 840 |

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access our Web site at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage* 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 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 June 20, 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.

## VII. Regulatory Impact Analysis

### *A. Statement of Need*

This regulation is important, since with the passage of the Affordable Care Act, we expect that changes to eligibility policies and business processes will need to be adopted. System transformations will be needed in most States to apply new rules to adjudicate eligibility for the program; enroll millions of newly eligible individuals through multiple channels; renew eligibility for existing enrollees; operate seamlessly with newly authorized Health Insurance Exchanges ("Exchanges"); participate in a system to verify information from applicants electronically; incorporate a streamlined application used to apply for multiple sources of coverage and financial assistance; and produce notices and communications to applicants and beneficiaries concerning the process, outcomes, and their rights to dispute or appeal.

We wish to ensure that a key outcome of our technology investments is a much higher degree of interaction and interoperability in order to maximize value and minimize burden and costs on providers, beneficiaries, and States. Thus, we are committed to providing 90 percent FFP for design, development, and installation of eligibility determination systems through CY 2015 or 75 percent FFP for maintenance and operations of such systems that meet the new regulatory requirements. We have provided that States must commit to a set of standards and conditions to receive the enhanced FFP. This enhanced FFP reduces the financial burden on States to 10 percent of the costs compared to the 50 percent financial burden currently in place and ensures that States utilize current technology development and deployment practices and produce reliable business outputs and outcomes.

### *B. Overall Impact*

The estimated costs of the Federal-share for Medicaid administration have been reflected in the FY 2012 President's Budget.

We have examined the impact of this final rule as required by Executive Order 12866 (September 30, 1993, Regulatory Planning and Review), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (September 19, 1980; Pub. L. 96–354) (RFA), section 1102(b)

of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year). This final rule is anticipated to have an annual effect on the economy of $100 million or more, making it an economically significant rule under the Executive Order 12866 and hence a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA that to the best of our ability presents the costs and benefits of this final rule.

States will continue to receive the traditional 50 percent FFP for reasonable administrative expenditures for designing, developing, installing, or enhancing the Medicaid portion of their integrated eligibility determination systems. Similarly, States will continue to receive 50 percent FFP for expenditures associated with the maintenance and operation of such systems.

This final rule, however, addresses the impact related to enhanced FFP for mechanized claims processing and information retrieval systems, including those that perform eligibility determination and enrollment activities, as well as the Medicaid portion of integrated eligibility determination systems that the Secretary determines are likely to provide more efficient, economical, and effective administration of the State plan.

In projecting the impact to the Federal government and State Medicaid agencies, we considered how the standards and conditions on MMIS and the availability of enhanced match for State eligibility systems through CY 2015 will impact State investments over the 10-year period of 2011 through 2020. As discussed in section VI.C of this final rule, we considered the expected costs to the Federal government of providing the enhanced match rate, changes in State investments due to the application of standards and conditions on MMIS (including eligibility systems), and possible savings as a result of the use of more modern, reusable, and efficient technologies.

*C. Potential Savings*

We considered a number of ways in which application of the standards and conditions, including increased use of MITA, could result in savings; however, as no States have yet reached MITA maturity, it is difficult to predict the savings that may accrue over any certain timeframe. These areas include the following:

(1) Modular technology solutions: As States, or groups of States, will begin to develop "modular" technology solutions, these solutions will be used by others through a "plug and play" approach, in which pieces of a new MMIS will not need to be reinvented from scratch every time, but rather, could be incorporated into the MMIS framework. We assume that savings associated with reusable technology could be achieved in both the development and operation of new systems. We expect that States will dispense with the need to engage in significant requirements analyses and the need to pay for new modules to be built when there are successful models around the country that they can draw down from a "technology bank" maintained by the Federal or State governments.

(2) Increased use of industry standards and open source technologies: While HIPAA administrative transaction standards have existed for 5 to 7 years, use of more specific industry standards to build new systems will allow such systems to exchange information seamlessly—a major goal of the Affordable Care Act, and one that is the explicit purpose of the standards work envisioned within section 1561 of the Act. We also believe that more open source technology will encourage the development of software solutions that address the needs of a variety of diverse activities—such as eligibility, member enrollment, and pharmacy analysis of drug claims. Software that is sufficiently flexible to meet different needs and perform different functions could result in cost savings, as States are able to use the systems without making major adaptations to them.

(3) Maintenance and operations: As States take up the changes in this final rule, the maintenance/operation costs of new systems should decrease. Less maintenance should be required than that necessary to reengineer special, highly customized systems every time there is a new regulatory or legal requirement.

(4) Reengineering business processes, more Web-based solutions, service-oriented architecture (SOA): Savings are likely to result from the modular design and operation of systems, combined with use of standardized business processes, as States are compelled to rethink and streamline processes as a result of greater reliance on technology.

*D. Calculation of MMIS Costs*

MMIS costs are estimated at approximately $10.0 billion over the 5-year budget window and $23.0 billion over the 10-year budget window. These costs represent only the Federal share.

To calculate the impact of the regulation on MMIS costs, we assumed that new systems on average will cost $150 million over 3 years for each State ($50 million total cost per year, or $45 million Federal costs at 90 percent FFP per year). We have identified that ten States have sophisticated systems that are very close to meeting the implemented regulation standards. As a result, we assumed the remaining 41 States will have approved APDs in place to replace or update their MMIS between FY 2011 and FY 2013 to comply with the new regulation standards and conditions.

We assumed that the States modernizing earlier in the cycle will see increased development, design, and installation costs, whereas States moving later will see increased development, design, and installation savings as they are able to take advantage of efficiencies gained by the early adopter States. Specifically, for those States that update or build new systems in FY 2011 and FY 2012, we assumed a 10 percent annual cost increase to new MMIS systems for design, development, and installation. For those States that build new systems in FY 2013 and FY 2014, we assumed a 5 percent annual savings to new MMIS systems for design, development, and installation. While it is difficult to predict State behavior, we believe all States will comply with the standards and conditions in this regulation to receive the 90 percent FFP, and have assumed that for the purpose of these estimates.

For maintenance, we assumed those States that have implemented the new regulation requirements would see a 20 percent annual savings, and for operations, we assumed those States that have implemented the new regulation requirements would see a 5 percent annual savings.

Based on these assumptions, we estimate the net Federal budgetary

impact on baseline MMIS costs from FY 2011 through 2015 of implementing the new regulation is approximately $1.1 billion, and the net Federal budgetary impact from FY 2011 through 2020 is approximately $557 million in savings.

*E. Calculation of Eligibility Systems Costs*

For eligibility systems, we applied the same methodology we used to calculate net Federal costs to MMIS under the new regulation.

To meet the requirements of the Affordable Care Act, States would have to build new systems or modernize existing systems. Most States will add new functionalities to interface with the Exchanges and implement new adaptability standards and conditions (such as incorporation of new mandated eligibility categories). We assume baseline costs for development, design, and installation at 50 percent FFP for all States are approximately $815 million from FY 2011 through 2015 and $1.1 billion from FY 2011 through 2020. Eligibility systems costs for maintenance and operations at 50 percent for all States are approximately $1.2 billion from FY 2011 through 2015 and $2.7 billion from FY 2011 through 2020. These costs represent only the Federal share.

To calculate the impact of the implemented regulation, we assumed that new systems on average will cost $50 million over 3 years for each State ($16.7 million total cost per year, or $15 million Federal costs at 90 percent FFP per year). We assumed that 25 States will replace their eligibility systems in FY 2011 through CY 2015. We assumed no States will build new systems past FY 2014 (beyond what is assumed in the baseline) due to the timing of the start of major coverage provisions in the Affordable Care Act, the length of time needed to build new systems (approximately 3 years), and the enhanced match ending after CY 2015. For maintenance, we assumed States that have implemented new systems meeting the required standards and conditions will see a 20 percent annual savings, and for operations, we assumed those States that have implemented the new systems would see a 5 percent annual savings. These assumptions are consistent with our approach for savings under MMIS in the regulation.

The net Federal cost impact from FY 2011 through 2015 of implementing our regulation on eligibility systems is approximately $2.2 billion, and the net Federal cost from FY 2011 through 2020 is $2.9 billion. These costs represent only the Federal share.

*F. Total Net Cost Impact*

Combining the impact of the regulation, the total net Federal cost impact is approximately $3.3 billion for FY 2011 through 2015 and approximately $2.3 billion for FY 2011 through 2020. We see lower costs over the 10-year budget window due to the increased savings to MMIS over time.

Aligned with these Federal net costs, States will see a corresponding decrease in their net State share due to the enhanced Federal match for eligibility systems they will receive through CY 2015 and the benefits accrued to their systems by putting in place the set of standards and conditions articulated in our regulation. Combining the impact of the regulation, the total net State budget impact is approximately $792.5 million in savings for FY 2011 through 2015 and approximately $1.9 billion in savings from for FY 2011 through 2020. Similar to the Federal budget impact, we expect to see higher savings achieved by States over the 10-year budget window due to the increased savings to MMIS over time.

The projections in this analysis are subject to considerable uncertainty, as they reflect projected costs based on technology and innovation. While we believe that advancements in technology will likely have an impact on States' systems, it is difficult to predict with certainty how significant the technology advancements may be and how they would affect State systems. For example, we have worked for many years developing the MITA maturity model. We believe that States should adopt the MITA framework as the basis for all MMIS replacements and major system upgrades related to the MMIS, and while we are requiring that States move to a MITA framework in order to receive enhanced funding, to date there are no States that have reached full MITA maturity. Consequently, having no States at full MITA maturity indicates that it takes time, money, and considerable effort for States to make changes to their current technology.

Additional uncertainty exists because we are unsure of the rate of adoption for States to make the changes in this final rule. The enhanced FFP is available for approximately 5 years, from CY 2011 through CY 2015, and States could upgrade or replace their systems at any point within the 5-year period. Further, States may simply choose to make moderate changes to existing systems, and even with the 90 and 75 percent enhanced FFP, such moderate changes could be less costly overall for States than replacing their systems.

Additional uncertainty exists about the rate of State adoption since some States may consider the costs needed to move to a more advanced system to be too high to undertake such a project. Similarly, States may decide not to make changes due to implementation of performance requirements and the performance reviews.

We acknowledge that there are uncertainties regarding our assumptions, including State behavior, and the associated cost estimates with respect to States implementing new systems within the timeframe assessed. However, we have offered our estimates with a 25 percent upper and lower range to capture such uncertainty in actual implementation outcomes. Due to a number of uncertainties in our assumptions, we believe a range of estimates better represents the net cost impact of this regulation. Tables 1 and 2 represent a 25 percent range for these aggregate net costs to the Federal and State government, respectively. It is important to point out that we believe that systems transformation is necessary to meet the vision of the Affordable Care Act and consequently, these costs are necessary and will provide for efficient systems that in the end will provide for more efficient and effective administration of the State plan. The separate impacts to MMIS and eligibility systems are summarized below.

TABLE 1—NET FEDERAL COST IMPACT OF REGULATION

[Dollars in millions] *

| | FY 2011–2020 |
|---|---|
| MMIS (excluding eligibility) | (417.4)–(695.7) |
| Eligibility Systems | 2,154.6–3,591.0 |
| Total | 1,737.2–2,895.3 |

* Numbers in parentheses represent savings to the Federal government.

TABLE 1.1—NET FEDERAL COST IMPACT OF REGULATION BY FISCAL YEAR

[Dollars in millions]*

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2011–2020 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| MMIS (excluding Eligibility) | 231.1 | 469.4 | 435.6 | 54.3 | (83.0) | (322.6) | (329.0) | (333.1) | (337.4) | (341.8) | (556.6) |
| Eligibility Systems | 328.9 | 436.7 | 634.6 | 469.3 | 337.4 | 127.9 | 130.5 | 133.1 | 135.8 | 138.5 | 2,872.8 |
| Total | 560.0 | 906.1 | 1,070.2 | 523.6 | 254.4 | (194.7) | (198.5) | (200.0) | (201.6) | (203.3) | 2,316.2 |

* Numbers in parentheses represent savings to the Federal government.

TABLE 2—NET STATE COST IMPACT OF REGULATION

[Dollars in Millions]*

| | FY 2011–2020 |
|---|---|
| MMIS (excluding eligibility) | (170.6)–(284.4) |

TABLE 2—NET STATE COST IMPACT OF REGULATION—Continued

[Dollars in Millions]*

| | FY 2011–2020 |
|---|---|
| Eligibility Systems | (1,255.4)–(2,092.3) |

TABLE 2—NET STATE COST IMPACT OF REGULATION—Continued

[Dollars in Millions]*

| | FY 2011–2020 |
|---|---|
| Total | (1,426.0)–(2,376.7) |

* Numbers in parentheses represent savings to State governments.

TABLE 2.1—NET STATE COST IMPACT OF REGULATION BY FISCAL YEAR

[Dollars in millions]*

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2011–2020 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| MMIS (excluding eligibility) | 25.7 | 52.2 | 48.4 | 1.3 | (24.1) | (61.6) | (65.2) | (66.6) | (68.0) | (69.5) | (227.5) |
| Eligibility Systems | (285.6) | (276.7) | (258.0) | (139.9) | 64.3 | (149.5) | (152.5) | (155.5) | (158.6) | (161.8) | (1,673.8) |
| Total | (259.9) | (224.6) | (209.6) | (138.6) | 40.2 | (211.1) | (217.7) | (222.1) | (226.6) | (231.3) | (1,901.3) |

* Numbers in parentheses represent savings to State governments.

*G. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) requires agencies to prepare a Regulatory Flexibility Analysis to describe and analyze the impact of final rule on small entities unless the Secretary can certify that the regulation will not have a significant impact on a substantial number of small entities. In the healthcare sector, Small Business Administration size standards define a small entity as one with between $7 million and $34 million in annual revenues. For the purposes of the RFA, essentially all non-profit organizations are considered small entities, regardless of size. Individuals and States are not included in the definition of a small entity.

Since this rule will affect States, which are not considered small entities, the Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

Additionally, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operation of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial amount of small rural hospitals. There is no negative impact on the program or on small businesses.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year of $100 million in 1995 dollars (updated annually for inflation), by State, local, or tribal governments, in the aggregate, or by the private sector. In 2011, that threshold is approximately $136 million. This final rule does not mandate expenditures by the State governments, local governments, tribal governments, in the aggregate, or the private sector, of $136 million. This rule provides that States can receive enhanced FFP if States ensure that the mechanized claims processing and information retrieval systems (MMIS) including, for a limited time, those that perform eligibility determination and enrollment activities, as well as the Medicaid portion of integrated eligibility determination systems, meet with certain conditions including migrating to the MITA framework and meet certain performance requirements. This is a voluntary activity; that is, States can continue to receive the traditional 50 percent FFP match rate for reasonable administrative expenditures for the design, development, or enhancement and maintenance and operations to the Medicaid portion of integrated eligibility determination systems to make eligibility determinations for Title XIX of the Act. This final rule imposes no substantial mandates on States. The State role in determining Medicaid eligibility is dependent upon the population type; specifically, some populations such as the elderly, blind, and disabled are typically determined by the Medicaid State agency whereas other population types may have their Medicaid eligibility determined by cash-assistance programs. Mechanized claims processing and information retrieval systems, including those that perform eligibility determination and enrollment activities and the Medicaid portion of integrated eligibility determination systems, at a minimum, will need to be updated. However, providing 90 percent FFP for design, development, and

installation or 75 percent FFP for maintenance and operations of such systems reduces the financial burden on States to 10 percent of the costs compared to the 50 percent financial burden currently in place. Specifically, while this entails certain procedural responsibilities, these activities do not involve substantial State expense; providing 90 percent and 75 percent FFP reduces the total State outlay.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We wish to note again that this is a voluntary activity and as such this regulation does not mandate any direct costs on State or local governments. Consequently, the requirements of Executive Order 13132 are not applicable.

*H. Alternatives Considered*

We considered that an alternative to our final rule could be that we not provide enhanced match for a limited time for State systems builds and not provide Federal standards and conditions. In fact, States could continue to receive the traditional 50 percent FFP for reasonable administrative expenditures for designing, developing, installing, or enhancing Medicaid eligibility determination systems. Similarly, States could continue to receive 50 percent FFP for expenditures associated with the maintenance and operation of such systems.

However, States must continue to meet the requirements of Federal legislation. Since the Affordable Care Act significantly alters Medicaid eligibility and requires coordination with the Exchanges, it is imperative that States have the resources and systems to be able to meet this challenge.

Therefore, we believe that if States were left to develop eligibility systems without Federal standards and conditions and without the benefit of enhanced match, States systems may not comport with our ultimate goal; that is, that design, development, implementation, and operation of IT and systems projects are in support of the Affordable Care Act.

*I. Accounting Statement*

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 3, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this rule. This table provides our best estimate of the net costs decrease in Medicaid payments as a result of the changes presented in this rule.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED NET COSTS, FROM FY 2011 TO FY 2020

[In $millions]

| Category | Transfers | | | |
|---|---|---|---|---|
| | Year dollar | Units discount rate | | Period covered |
| | 2010 | 7% | 3% | |
| **Annualized Monetized Transfers** | Primary Estimate | $311.31 | $266.55 | FYs 2011–2020 |
| | Low Estimate | 233.48 | 199.91 | FYs 2011–2020 |
| | High Estimate | 389.14 | 333.19 | FYs 2011–2020 |
| From | Federal Government to State Governments | | | |
| **Annualized Monetized Transfers** | Primary Estimate | −$189.87 | −$189.82 | FYs 2011–2020 |
| | Low Estimate | −142.40 | −142.36 | FYs 2011–2020 |
| | High Estimate | −237.34 | −237.28 | FYs 2011–2020 |
| From | State Governments to System Vendors, Integrators | | | |

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects in 42 CFR Part 433**

Administrative practice and procedure, Child support Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

## PART 433—STATE FISCAL ADMINISTRATION

■ 1. The authority citation for part 433 continues to read as follows:

**Authority:** Section 1102 of the Social Security Act, (42 U.S.C. 1302).

## Subpart C—Mechanized Claims Processing and Information Retrieval Systems

■ 2. Section 433.110 is amended by revising paragraph (a)(2) to read as follows:

**§ 433.110 Basis, purpose, and applicability.**

(a) * * *

(2) Section 1903(r) of the Act, which imposes certain standards and conditions on mechanized claims processing and information retrieval systems (including eligibility determination systems) in order for these systems to be eligible for Federal funding under section 1903(a) of the Act.

* * * * *

■ 3. Section 433.111 is amended by—

■ A. Revising paragraph (b)(3).

■ B. Adding paragraph (c).

The revision and addition read as follows:

**§ 433.111 Definitions.**

* * * * *

(b) * * *

(3) Approved enhancements to the system.

(c) "Medicaid Information Technology Architecture (MITA)" is defined at § 495.302 of this chapter.

■ 4. Section 433.112 is amending by–

■ A. Revising paragraphs (a), (b)(2), and (c).

■ B. Amending paragraph (b)(7) by removing the reference "45 CFR 74.171" and adding in its place, the reference "45 CFR 74.27(a)".

■ C. Adding paragraphs (b)(10) through (b)(16).

The revisions and additions read as follows:

**§ 433.112 FFP for design, development, installation or enhancement of mechanized claims processing and information retrieval systems.**

(a) Subject to paragraph (c) of this section, FFP is available at the 90 percent rate in State expenditures for the design, development, installation, or enhancement of a mechanized claims processing and information retrieval system only if the APD is approved by CMS prior to the State's expenditure of funds for these purposes.

(b) * * *

(2) The system meets the system requirements, standards and conditions, and performance standards in Part 11 of the State Medicaid Manual, as periodically amended.

* * * * *

(10) Use a modular, flexible approach to systems development, including the use of open interfaces and exposed application programming interfaces; the separation of business rules from core programming, available in both human and machine readable formats.

(11) Align to, and advance increasingly, in MITA maturity for business, architecture, and data.

(12) Ensure alignment with, and incorporation of, industry standards: The HIPAA privacy, security and transaction standards; accessibility standards established under section 508 of the Rehabilitation Act, or standards that provide greater accessibility for individuals with disabilities, and compliance with Federal civil rights laws; standards adopted by the Secretary under section 1104 of the Affordable Care Act; and standards and protocols adopted by the Secretary under section 1561 of the Affordable Care Act.

(13) Promote sharing, leverage, and reuse of Medicaid technologies and systems within and among States.

(14) Support accurate and timely processing and adjudications/eligibility determinations and effective communications with providers, beneficiaries, and the public.

(15) Produce transaction data, reports, and performance information that would contribute to program evaluation, continuous improvement in business operations, and transparency and accountability.

(16) Ensure seamless coordination and integration with the Exchange, and allow interoperability with health information exchanges, public health agencies, human services programs, and community organizations providing outreach and enrollment assistance services.

(c) FFP is available at 90 percent of a State's expenditures for the design, development, installation, or enhancement of an eligibility determination system that meets the requirements of this subpart and only for costs incurred for goods and services provided on or after April 19, 2011 and on or before December 31, 2015.

**§ 433.113 [Removed]**

■ 5. Section 433.113 is removed.

■ 6. Section 433.114 is amended by—

■ A. Amending paragraph (a) by removing the reference "(h)" and by adding in its place the reference "(i)".

■ B. Revising paragraph (b).

The revision reads as follows:

**§ 433.114 Procedures for obtaining initial approval; notice of decision.**

* * * * *

(b) If CMS disapproves the system, the notice will include all of the following information:

(1) The findings of fact upon which the determination was made.

(2) The procedures for appeal of the determination in the context of a reconsideration of the resulting disallowance to the Departmental Appeals Board.

■ 7. Section 433.116 is amended by —

■ A. Amending paragraph (a) by removing the phrase "Subject to 42 CFR 433.113(c)," and by adding in its place "Subject to paragraph (j) of this section,".

■ B. Amending paragraph (b) by removing the reference "(h)" and by adding in its place the reference "(i)".

■ C. Adding new paragraphs (i) and (j).

The additions read as follows:

**§ 433.116 FFP for operation of mechanized claims processing and information retrieval systems.**

* * * * *

(i) The standards and conditions of § 433.112(b)(10) through (b)(16) of this subpart must be met.

(j) Beginning and no earlier than, April 19, 2011, FFP is available at 75 percent of a State's expenditures for the operation of an eligibility determination system that meets the requirements of this subpart. FFP at 75 percent is not available for eligibility determination systems that do not meet the standards and conditions by December 31, 2015.

**§ 433.117 [Amended]**

■ 8. Section 433.117 is amended by—

■ A. Amending paragraph (a) by removing the phrase "all conditions" and adding in its place the phrase "all standards and conditions".

■ B. Amending paragraph (c)(2) by removing the reference "(h)" and adding in its place the reference "(j)".

■ 9. Section 433.119 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 433.119 Conditions for reapproval; notice of decision.**

(a) CMS periodically reviews each system operation initially approved under § 433.114 of this subpart and reapproves it for FFP at 75 percent of expenditures if the following standards and conditions are met:

(1) The system meets the requirements of § 433.112(b)(1), (3), (4), (7) through (16) of this subpart.

(2) The system meets the conditions of § 433.116 (d) through (j).

(3) The system meets the standards, conditions, and performance standards for reapproval and the system requirements in part 11 of the State Medicaid Manual as periodically amended.

(4) A State system must meet all of the requirements of this subpart within the appropriate period CMS determines should apply as required by § 433.123(b) of this subpart.

* * * * *

(c) After performing the review under paragraph (a) of this section, CMS will issue to the Medicaid agency a written notice informing the agency whether the system is reapproved or disapproved. If the system is disapproved, the notice will include the following information:

(1) CMS's decision to reduce FFP for system operations from 75 percent to 50 percent of expenditures, beginning with the first day of the first calendar quarter after CMS issues the written notice to the State.

(2) The findings of fact upon which the determination was made.

(3) A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Departmental Appeals Board.

■ 10. Section 433.120 is amended by revising paragraph (b) to read as follows:

**§ 433.120 Procedures for reduction of FFP after reapproval review.**

* * * * *

(b) CMS will reduce FFP in expenditures for system operations from 75 percent to 50 percent.

■ 11. Section 433.121 is amended by revising paragraph (a) to read as follows:

**§ 433.121 Reconsideration of the decision to reduce FFP after reapproval review.**

(a) The State Medicaid agency may appeal (to the Departmental Appeals Board under 45 CFR Part 16) a

disallowance concerning a reduction in FFP claimed for system operations caused by a disapproval of the State's system.

* * * * *

**§ 433.130 [Removed]**

■ 12. Section 433.130 is removed.

■ 13. Section 433.131 is amended by adding a new paragraph (c) to read as follows:

**§ 433.131 Waiver for noncompliance with conditions of approval and reapproval.**

* * * * *

(c) *Waiver of deadline.* In no case will CMS waive the December 31, 2015 deadlines referenced in § 433.112(c) and § 433.116(j).

**Authority:** Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program.

Dated: March 16, 2011.

**Donald M. Berwick,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: April 12, 2011.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2011–9340 Filed 4–14–11; 11:15 am]

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Part III

## Department of Education

Applications for New Awards; Enhanced Assessment Instruments Grants Program—Enhanced Assessment Instruments; Notice

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Enhanced Assessment Instruments Grants Program—Enhanced Assessment Instruments

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

*Overview Information*:

Enhanced Assessment Instruments Grants Program—Enhanced Assessment Instruments

Notice inviting applications for new awards for fiscal year (FY) 2010 funds.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.368A.

*Dates*:

*Applications Available:* April 19, 2011.

*Deadline for Notice of Intent to Apply:* May 19, 2011.

*Deadline for Transmittal of Applications:* June 3, 2011.

*Deadline for Intergovernmental Review:* August 2, 2011.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the EAG program is to enhance the quality of assessment instruments and systems used by States for measuring the academic achievement of elementary and secondary school students.

*Priorities:* This competition includes five absolute priorities and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(iv), absolute priorities 1 through 4 (Statutory Priorities) are based on section 6112 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7301a). Absolute priority 5 (Regulatory Priority) and competitive preference priority 1 are from the notice of final priorities, requirements, definitions, and selection criteria published elsewhere in this issue of the **Federal Register** (2011 NFP).

*Absolute Priorities:* For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet: (a) one or more of the Statutory Priorities and (b) the Regulatory Priority.

These priorities are:

*Absolute Priority 1—Collaboration.* Collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for these assessments described in section 1111(b)(3) of the ESEA.

*Absolute Priority 2—Use of Multiple Measures of Student Academic Achievement.* Measure student academic achievement using multiple measures of student academic achievement from multiple sources.

*Absolute Priority 3—Charting Student Progress Over Time.* Chart student progress over time.

*Absolute Priority 4—Comprehensive Academic Assessment Instruments.* Evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance- and technology-based academic assessments.

*Absolute Priority 5—English Language Proficiency Assessment System.*

To meet this priority, an applicant must propose a comprehensive plan to develop an English language proficiency assessment system that is valid, reliable, and fair for its intended purpose. Such a plan must include the following features:

(a) *Design.* The assessment system must—

(1) Be designed for implementation in multiple States;

(2) Be based on a common definition of "English learner" adopted by the applicant State and, if the applicant applies as part of a consortium, adopted and held in common by all States in the consortium, where common with respect to the definition of "English learner" means identical for purposes of the diagnostic (*e.g.,* screener or placement) assessments and associated achievement standards used to classify students as English learners as well as the summative assessments and associated achievement standards used to exit students from English learner status;

(3) At a minimum, include diagnostic (*e.g.,* screener or placement) and summative assessments;

(4) Measure students' English proficiency against a set of English language proficiency standards held by the applicant State and, if the applicant applies as part of a consortium, held in common by all States in the consortium;

(5) Measure students' English proficiency against a set of English language proficiency standards that correspond to a common set of college- and career-ready standards (as defined in this notice) in English language arts and mathematics, are rigorous, are developed with broad stakeholder involvement, are vetted with experts and practitioners, and for which external evaluations have documented rigor and correspondence with the common set of college- and career-ready standards in English language arts and mathematics;

(6) Cover the full range of the English language proficiency standards across the four language domains of reading, writing, speaking, and listening, as required by section 3113(b)(2) of the ESEA;

(7) Ensure that the measures of students' English proficiency consider the students' control over the linguistic components of language (*e.g.,* phonology, syntax, morphology);

(8) Produce results that indicate whether individual students have attained the English proficiency necessary to participate fully in academic instruction in English and meet or exceed college- and career-ready standards;

(9) Provide at least an annual measure of English proficiency and student progress in learning English for English learners in kindergarten through grade 12 in each of the four language domains of reading, writing, speaking, and listening;

(10) Assess all English learners, including English learners who are also students with disabilities and students with limited or no formal education, except for English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2); and

(11) Be accessible to all English learners, including by providing appropriate accommodations for English learners with disabilities, except for English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2).

(b) *Technical quality.* The assessment system must measure students' English proficiency in ways that—

(1) Are consistent with nationally recognized professional and technical standards; and

(2) As appropriate, elicit complex student demonstrations of comprehension and production of academic English (*e.g.,* performance tasks, selected responses, brief or extended constructed responses).

(c) *Data.* The assessment system must produce data that—

(1) Include student attainment of English proficiency and student progress in learning English (including

data disaggregated by English learner subgroups such as English learners by years in a language instruction educational program; English learners whose formal education has been interrupted; students who were formerly English learners by years out of the language instruction educational program; English learners by level of English proficiency, such as those who initially scored proficient on the English language proficiency assessment; English learners by disability status; and English learners by native language);

(2) Provide a valid and reliable measure of students' abilities in each of the four language domains (reading, writing, speaking, and listening) and a comprehensive English proficiency score based on all four domains, with each language domain score making a significant contribution to the comprehensive ELP score, at each proficiency level; and

(3) Can be used for the—

(i) Identification of students as English learners;

(ii) Decisions about whether a student should exit from English language instruction educational programs;

(iii) Determinations of school, local educational agency, and State effectiveness for the purposes of accountability under Title I and Title III of the ESEA;

(4) Can be used, as appropriate, as one of multiple measures, to inform—

(i) Evaluations of individual principals and teachers in order to determine their effectiveness;

(ii) Determinations of principal and teacher professional development and support needs; and

(iii) Strategies to improve teaching, learning, and language instruction education programs.

(d) *Compatibility.* The assessment system must use compatible approaches to technology, assessment administration, scoring, reporting, and other factors that facilitate the coherent inclusion of the assessments within States' student assessment systems.

(e) *Students with the most significant cognitive disabilities.* The comprehensive plan to develop an English language proficiency assessment system must include the strategies the applicant State and, if the applicant is part of a consortium, all States in the consortium, plans to use to assess the English proficiency of English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2) in lieu of including those students in the operational administration of the assessments developed for other English learners under a grant from this competition.

*Competitive Preference Priority:* For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 15 points to an application, depending on how well the application meets this priority.

This priority is:

*Competitive Preference Priority 1—Collaborative Efforts Among States.*

To meet this priority, an applicant must—

(a) Include a minimum of 15 States in the consortium;

(b) Identify in its application a proposed project management partner and provide an assurance that the proposed project management partner is not partnered with any other eligible applicant applying for an award under this competition; [1]

(c) Provide a description of the consortium's structure and operation. The description must include—

(1) The organizational structure of the consortium (*e.g.,* differentiated roles that a member State may hold);

(2) The consortium's method and process (*e.g.,* consensus, majority) for making different types of decisions (*e.g.,* policy, operational);

(3) The protocols by which the consortium will operate, including protocols for member States to change roles in the consortium, for member States to leave the consortium, and for new member States to join the consortium;

(4) The consortium's plan, including the process and timeline, for setting key policies and definitions for implementing the proposed project, including, for any assessments developed through a project funded by this grant, the common set of standards upon which to base the assessments, a common set of performance-level descriptors, a common set of achievement standards, common assessment administration procedures, common item-release and test-security policies, and a common set of policies and procedures for accommodations and student participation; and

(5) The consortium's plan for managing grant funds received under this competition; and

(d) Provide a memorandum of understanding or other binding agreement executed by each State in the consortium that includes an assurance that, to remain in the consortium, the State will adopt or use any instrument, including to the extent applicable, assessments, developed under the proposed project no later than the end of the project period.

*Requirements:* The following requirements, which are from 2011 NFP, apply to this competition. An eligible applicant awarded a grant under this program must:

(a) Evaluate the validity, reliability, and fairness of any assessments or other assessment-related instruments developed under a grant from this competition, and make available documentation of evaluations of technical quality through formal mechanisms (*e.g.,* peer-reviewed journals) and informal mechanisms (*e.g.,* newsletters), both in print and electronically;

(b) Actively participate in any applicable technical assistance activities conducted or facilitated by the Department or its designees, coordinate with the RTTA program in the development of assessments under this program, and participate in other activities as determined by the Department;

(c) Develop a strategy to make student-level data that result from any assessments or other assessment-related instruments developed under a grant from this competition available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies; [2]

(d) Ensure that any assessments or other assessment-related instruments developed under a grant from this competition will be operational (ready for large-scale administration) at the end of the project period;

(e) Ensure that funds awarded under the EAG program are not used to support the development of standards, such as under the English language proficiency assessment system priority or any other priority;

(f) Maximize the interoperability of any assessments and other assessment-related instruments developed with funds from this competition across technology platforms and the ability for States to move their assessments from one technology platform to another by doing the following, as applicable, for any assessments developed with funds from this competition by—

[1] In selecting a proposed project management partner, an eligible applicant must comply with the requirements for procurement in 34 CFR 80.36.

[2] Eligible applicants awarded a grant under this program must comply with the Family Educational Rights and Privacy Act (FERPA) and 34 CFR part 99, as well as State and local requirements regarding privacy.

(1) Developing all assessment items in accordance with an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period, without non-standard extensions or additions; and

(2) Producing all student-level data in a manner consistent with an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period;

(g) Unless otherwise protected by law or agreement as proprietary information, make any assessment content (i.e., assessments and assessment items) and other assessment-related instruments developed with funds from this competition freely available to States, technology platform providers, and others that request it for purposes of administering assessments, provided that those parties receiving assessment content comply with consortium or State requirements for test or item security; and

(h) For any assessments and other assessment-related instruments developed with funds from this competition, use technology to the maximum extent appropriate to develop, administer, and score the assessments and report results.

*Definitions:* The following definitions, which are from 2011 NFP, apply to this competition.

*Common set of college-and career-ready standards* means a set of academic content standards for grades K–12 held in common by multiple States, that (a) define what a student must know and be able to do at each grade level; (b) if mastered, would ensure that the student is college- and career-ready by the time of high school graduation; and (c) for any consortium of States applying under the EAG program, are substantially identical across all States in the consortium.

A State in a consortium may supplement the common set of college- and career-ready standards with additional content standards, provided that the additional standards do not comprise more than 15 percent of the State's total standards for that content area.

*English language proficiency assessment system*, for purposes of the English language proficiency assessment system priority, means a system of assessments that includes, at a minimum, diagnostic (*e.g.,* screener or placement) and summative assessments at each grade level from kindergarten through grade 12 that cover the four language domains of reading, writing, speaking, and listening, as required by section 3113(b)(2) of the ESEA, and that meets all other requirements of the priority.

*English learner* means a student who is an English learner as defined by the applicant consistent with the definition of a student who is "limited English proficient" as that term is defined in section 9101(25) of the ESEA. If the applicant submits an application on behalf of a consortium, member States must develop and adopt a common definition of the term during the period of the grant.

*Student with a disability* means a student who has been identified as a child with a disability under the Individuals with Disabilities Education Act, as amended.

*Program Authority:* 20 U.S.C. 7301a and 7842.

*Applicable Regulations*: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria published elsewhere in this issue of the **Federal Register**.

**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:* $10,700,000 in FY 2010 funds to be awarded in 2011. Contingent upon the availability of funds and the quality of applications, we may make additional awards with FY 2011 funds from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* $5,000,000–$10,000,000.

*Estimated Average Size of Awards:* $7,500,000.

*Estimated Number of Awards:* 2.

**Note:** Applicants should submit a single budget request for a single budget and project period of up to 48 months. Subject to the availability of future years' funds, the Department intends to make supplemental grant awards to the grants awarded with FY 2010 funds.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

## III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs) as defined in section 9101(41) of the ESEA and consortia of such SEAs.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* An application from a consortium of SEAs must designate one SEA as the fiscal agent.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can access the electronic grant application for the Enhanced Assessment Instruments Grants Program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.368, not 84.368A). You can also obtain a copy of the application package by contacting the program contact persons listed under *Agency Contacts* in section VII of this notice.

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 competition. Page Limit: The project narrative (Part 3 of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application and the absolute and competitive preference priorities. You must limit the project narrative (Part 3) to the equivalent of no more than 65 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the project narrative, including titles, headings, footnotes, quotations, and captions as well as all text in charts, tables, figures, and graphs.
- Times New Roman font no smaller than 11.0 point for all text in the project narrative, including titles, headings, footnotes, quotations, and captions as well as all text in charts, tables figures, and graphs. (Font sizes that are smaller than 11 but round up to 11, such as 10.7 point, will be considered smaller than 11.0.)
- Any screen shots included as part of the narrative should follow these standards or, if other standards are applied, be sized to equal the equivalent amount of space if these standards were applied.

The page limit applies to the project narrative, including the table of contents

(Part 3), which must include a discussion of how the application meets one or more of the statutory absolute priorities and how well the applicant meets the regulatory absolute priority; if applicable, how the application meets the competitive preference priority; and how well the application addresses each of the selection criteria. The page limit also applies to any attachments to the project narrative other than the references/bibliography. In other words, the entirety of Part 3 of the application, including the aforementioned discussion and any attachments to the project narrative, must be limited to the equivalent of no more than 65 pages. The only allowable attachments other than those included in the project narrative are those outlined as "Other Attachments Forms" for Part 6 in the application package. Any attachments other than those included within the page limit of the project narrative and those outlined for Part 6 will not be reviewed.

The 65-page limit, or its equivalent, does not apply to the following sections of an application: Part 1 (including the response regarding research activities involving human subjects); Part 2 (two-page project abstract); Part 4 (the budget sections, including the chart and narrative budget justification); Part 5 (standard assurances and certifications); and Part 6 (other attachments forms, including: References/bibliography for the project narrative, individual résumés for project director(s) and key personnel [Applicants are encouraged to limit each résumé to no more than five pages], [if applicable] memoranda of understanding or other binding agreement, [if applicable] assurance regarding management partner, copy of applicant's indirect cost rate agreement, and [if applicable] letters of commitment and support from collaborating SEAs and organizations.

Our reviewers will not read any pages of your project narrative that exceed the page limit; or exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

*Applications Available:* April 19, 2011.

*Deadline for Notice of Intent to Apply:* May 19, 2011.

We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by sending a short e-mail message. This short e-mail should provide the applicant organization's name and address. The Secretary requests that this e-mail be sent to *Collette.Roney@ed.gov* with "Intent to Apply" in the e-mail subject line. Applicants that do not provide this e-mail notification may still apply for funding.

*Deadline for Transmittal of Applications:* June 3, 2011.

Applications for grants under this competition 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 in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition 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 competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in 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; and

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 this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Enhanced Assessment Instruments Grants Program, CFDA number 84.368A, 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 Enhanced Assessment Instruments Grants Program at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.368, not 84.368A).

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 competition 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 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: Collette Roney, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W210, Washington, DC 20202. FAX: (202) 260–7764.

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 84.368A), 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 84.368A), 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 competition are from the 2011 NFP, published elsewhere in this issue of the **Federal Register** and are listed in the application package.

2. *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 in 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).

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed four measures to evaluate the overall effectiveness of the Enhanced Assessment Instruments Grants program: (1) The number of States that participate in Enhanced Assessment Instruments Grants projects funded by this competition; (2) the percentage of grantees that, at least twice during the period of their grants, make available to SEA staff in non-participating States and to assessment researchers information on findings resulting from the Enhanced Assessment Instruments Grants through presentations at national conferences, publications in refereed journals, or other products disseminated to the assessment community; (3) for each grant cycle and as determined by an expert panel, the percentage of Enhanced Assessment Instruments Grants that yield significant research, methodologies, products, or tools regarding assessment systems or assessments; and (4) for each grant cycle and as determined by an expert panel, the percentage of Enhanced Assessment Instruments Grants that yield significant research, methodologies, products, or tools specifically regarding accommodations and alternate assessments for students with disabilities and limited English proficient students. Grantees will be expected to include in their interim and final performance reports information about the accomplishments of their projects because the Department will need data on these measures.

## VII. Agency Contact

*For Further Information Contact:* Collette Roney, Enhanced Assessment Grants Program, Office of Elementary and Secondary Education, U.S.

Department of Education, 400 Maryland Avenue, SW., room 3W210, Washington, DC 20202–6132. Telephone: (202) 401–5245, or by e-mail: *collette.roney@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 in this notice.

*Electronic Access to This Document:* 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

Dated: April 14, 2011.

**Thelma Meléndez de Santa Ana,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2011–9484 Filed 4–18–11; 8:45 am]

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Part IV

## Department of Education

Notice of Final Priorities, Requirements, Definitions, and Selection Criteria; Notice

## DEPARTMENT OF EDUCATION

### Notice of Final Priorities, Requirements, Definitions, and Selection Criteria

*Enhanced Assessment Instruments; Catalog of Federal Domestic Assistance (CFDA) Number:* 84.368.

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice of final priorities, requirements, definitions, and selection criteria.

**SUMMARY:** The Assistant Secretary for Elementary and Secondary Education announces priorities, requirements, definitions, and selection criteria under the Enhanced Assessment Instruments Grant program, also called the Enhanced Assessment Grants (EAG) program. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2011 and later years. We take these actions to focus Federal financial assistance on the pressing need to improve the assessment instruments and systems used by States to accurately measure student academic achievement and growth under the Elementary and Secondary Education Act of 1965, as amended (ESEA).

**DATES:** *Effective Date:* These priorities, requirements, definitions, and selection criteria are effective May 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Collette Roney, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W210, Washington, DC 20202. Telephone: (202) 401–5245. E-mail: *Collette.Roney@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Program:* The purpose of the EAG program is to enhance the quality of assessment instruments and systems used by States for measuring the academic achievement of elementary and secondary school students.

*Program Authority:* 20 U.S.C. 7301a.

*Public Comment:* We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the **Federal Register** on January 7, 2011 (76 FR 1138). That notice contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria. In response to comments we received on the notice, we have made revisions to Priority 1—English Language Proficiency Assessment System (ELP Priority), Priority 2—Collaborative Efforts Among States (Collaborative Efforts Priority), and the requirements, definitions, and selection criteria.

*Public Comment:* In response to our invitation in the notice of proposed priorities, requirements, definitions, and selection criteria, 15 parties submitted comments. We group major issues according to subject. Generally, we do not address technical and other minor changes.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the priorities, requirements, definitions, and selection criteria since publication of the notice of proposed priorities, requirements, definitions, and selection criteria follows.

**Priority 1—English Language Proficiency (ELP) Assessment System**

*Comment:* Many commenters expressed support for the ELP Priority and its broad objective of promoting the development of high-quality ELP assessment systems. Commenters stated that the priority addresses assessment needs unique to English learners and that improvements in assessments used to measure English learners' progress in and attainment of English proficiency will support improvements in curriculum and instruction for English learners, help raise their educational achievement, and help close achievement gaps between English learners and their English proficient-peers. Commenters also stated that the priority promotes innovative, high-quality assessments that are aligned with common college- and career-ready standards, which will help prepare English learners for higher education and careers and ensure that English learners have access to the same rigorous academic content as all students. Another commenter stated that the use of multiple measures of both academic and English proficiency will provide more ongoing feedback to educators as well as students and their families and offers the promise of greater validity and reliability in assessments for the diverse population of English learners.

*Discussion:* We agree with the commenters that the development of high-quality ELP assessments aligned with ELP standards that in turn correspond to a common set of college- and career-ready standards in English language arts and mathematics are likely to contribute to improved teaching and learning for English learners. We appreciate the commenters' recognition that we designed the ELP Priority to support the development of high-quality diagnostic and summative assessments that measure students' abilities in each of the four language domains (reading, writing, speaking, and listening), in order to meet the significant need for ELP assessments that correspond to college- and career-ready standards held in common by multiple States.

*Changes:* None.

*Comment:* Some commenters recommended that the ELP assessment system outlined in the ELP Priority be defined more explicitly and suggested that the priority explicitly support the development of benchmark and formative assessments as well as diagnostic and summative assessments. The commenters expressed concern that formative assessments may be under-emphasized in the resulting ELP assessment systems if they are not explicitly included in the priority, and stated that many educators prefer an ELP assessment system that includes benchmark and formative assessments. One commenter stressed that the focus on assessments developed under this priority should be on measuring students' progress towards English proficiency. Another commenter recommended that the limited amount of funds for the EAG program be focused on the development of summative assessments only.

*Discussion:* We believe that two types of assessments are particularly important for English learners: (1) Diagnostic assessments (*e.g.,* screener or placement tests), which can be used to determine whether a student should be classified as an English learner, and (2) summative assessments, which can be used to determine whether an English learner has made progress toward and achieved grade-level English proficiency and should no longer be classified as an English learner. The ELP Priority does not preclude an applicant from including benchmark or formative assessments in the ELP assessment system it proposes to develop. However, because of the importance of diagnostic and summative assessments to the implementation of Federal education programs such as Title III of the ESEA, and given the limited resources available, we decline to expand the ELP Priority to require more than the development of diagnostic and summative ELP assessments.

We agree that clarification of the components for an ELP assessment system developed under the ELP Priority would be helpful and have added a definition of *English language*

*proficiency (ELP) assessment system,* for purposes of the ELP Priority.

*Changes:* We have added a definition of *ELP assessment system* to the final definitions. The definition specifies that, for purposes of the ELP Priority, *ELP assessment system* means a system of assessments that includes, at a minimum, diagnostic (*e.g.,* screener or placement) and summative assessments at each grade level from kindergarten through grade 12 that cover the four language domains of reading, writing, speaking, and listening, as required by section 3113(b)(2) of the ESEA, and that meets all other requirements of the priority. Consistent with this change, we also have revised paragraphs (a)(2) and (a)(3) of the ELP priority to include both screener and placement assessments as examples of diagnostic assessments.

*Comment:* One commenter noted that schools implementing the ELP assessment systems developed under the ELP Priority will need time to transition to the new assessments and stated that the proposed priorities, requirements, definitions, and selection criteria did not address how an applicant would need to approach such a transition.

*Discussion:* Given the four-year project period we are planning for grants under this program, we anticipate that some of the actions needed to support the transition to new ELP assessment systems may take place after the end of the project period, while other actions (*e.g.,* developing professional capacity and outreach as described in the selection criteria) will occur during the project period. Because operational administration of the assessments is not required during the project period, we are not requiring a complete transition plan. Transition issues will be addressed by applicants, as necessary, in response to selection criterion (e), the professional capacity and outreach selection criterion, and we decline to add any additional requirements relating to transition, as some of these activities may occur outside the grant period. We note, in addition, that the Department routinely provides guidance to the field on current implementation issues and will continue to do so in the future.

*Changes:* None.

*Comment:* Some commenters expressed concern that the ELP Priority does not adequately address coordination between the grants to be awarded under the EAG program and grants already awarded under the RTTA program. The commenters recommended that the ELP Priority require more specific coordination between EAG and RTTA grants. They also suggested that we ensure that ELP assessments developed under the EAG program be embedded in work on assessments under the RTTA program, particularly because of the academic language that students likely will need in order to access the assessments to be developed under the RTTA grants.

*Discussion:* We understand the importance of ensuring that projects funded under the EAG program and other Department programs related to assessments coordinate efforts where appropriate. We plan to facilitate coordination and technical assistance, as needed, across newly awarded EAG projects and the RTTA grants. EAG and RTTA grantees will be required to participate in such technical assistance and other activities conducted or facilitated by the Department or its designees. We are clarifying this expectation for coordination by adding language to requirement (b) that will require EAG grantees to coordinate with the RTTA program.

*Changes:* We have revised requirement (b) by adding a phrase that requires EAG grantees to coordinate with the RTTA program in the development of assessments under the EAG program.

*Comment:* One commenter stated that States will need guidance and technical support from the Department on such implementation issues as accountability, timeframes, and benchmarks for English learners' linguistic and academic progress once States have developed their ELP assessments. The commenter also asserted that, if the reauthorization of the ESEA occurs prior to the development and implementation of ELP assessment systems funded under the EAG program, a reauthorized ESEA should not constrain such work.

*Discussion:* We recognize that the Department will need to work with grantees and provide technical assistance on implementing new ELP assessment systems. If a reauthorized ESEA requires changes to the projects awarded under the EAG program, we will work with grantees to make the necessary changes and provide guidance to the field, as appropriate.

*Changes:* None.

*Comment:* A few commenters expressed concern with the examples of linguistic components of language included in paragraph (a)(7) of the proposed ELP Priority. One commenter suggested adding "semantics and graphophonemic" to the list of examples. Another commenter suggested removing the list of examples. One commenter stated that the linguistic components should be embedded within ELP standards and that determinations of students' English proficiency should not be limited to the sum of students' abilities on any group of specific linguistic components of language. This commenter expressed concern that the ELP Priority could be interpreted as requiring the ELP assessment systems to provide subscores on discrete linguistic components. Another commenter stated that the ELP Priority should specify that measurement of any linguistic component should be driven by the functions of comprehension and expression. This commenter suggested revising the priority to require the assessments to reflect the linguistic components of language or demonstrate students' control over linguistic components of language.

*Discussion:* Based on consideration of the comments and our further review of this issue prompted by the comments, we revised the list of the examples of linguistic components of language by removing "vocabulary" from the list. Use of the abbreviation "*e.g.*" in the parenthetical indicates that the list is not exhaustive or definitive.

While a valid and reliable ELP assessment system should consider students' control over the linguistic components of language, we do not intend to require that the ELP assessment systems generate subscores for the linguistic components of language. However, we do intend to require that the ELP assessment systems generate a valid and reliable measure of students' abilities in each of the four language domains and are revising the priority accordingly.

*Changes:* We have revised paragraph (a)(7) of the ELP Priority to indicate that the ELP assessment systems must ensure that the measures of students' English proficiency consider students' control over the linguistic components of language (*e.g.,* phonology, syntax, morphology). We also have revised paragraph (c)(2) of the ELP Priority to state that ELP assessment systems developed under the priority must provide a valid and reliable measure of students' abilities in each of the four language domains and a comprehensive ELP score based on all four domains, with each language domain score making a significant contribution to the comprehensive ELP score, at each proficiency level. To be consistent with revisions to paragraph (c)(2) of the ELP Priority, we have revised paragraph (a)(9) of the ELP Priority to list the four language domains.

*Comment:* Some commenters expressed concern about references to the uses of data from the ELP

assessment systems for evaluations of teacher and principal effectiveness. A few commenters outlined several concerns that may limit the usefulness of ELP assessments in evaluating teacher and principal effectiveness, for example: Limitations of current testing instruments; difficulty in isolating the effects of a teacher or principal on an individual student's scores, especially when multiple teachers are involved in a student's instruction; a limited knowledge base about growth in English learners' acquisition of English and how to use measures of growth; and the complexities of using longitudinal data, especially for English learners who tend to have high mobility rates. One commenter noted that States could misinterpret the ELP Priority as requiring student learning on an ELP assessment to be the only measure of teacher effectiveness.

A few commenters suggested revising the ELP Priority to require the use of multiple measures for evaluations of teacher and principal effectiveness, as opposed to using ELP assessments as the sole measure to evaluate teacher and principal effectiveness. One commenter suggested removing the provisions of the ELP Priority that refer to the use of ELP assessment data for informing evaluations of teacher and principal effectiveness. A few commenters stated that ELP assessments should be used for evaluations of teacher and principal effectiveness only after a research base has been established to support the use of the assessments for such purposes.

*Discussion:* The ELP Priority does not require that States or other entities use data from ELP assessment systems developed under the priority as the single measure of teacher and principal effectiveness. The ELP Priority, in combination with the assessment design selection criterion, is intended to signal that ELP assessment systems should be developed so that, as appropriate, the data that they provide can be used as one of multiple measures for teacher and principal evaluation. We have revised the language in the ELP Priority and the assessment design selection criterion to more clearly reflect that intent.

*Changes:* We have revised paragraph (c) of the ELP Priority to distinguish those circumstances in which ELP assessment data can be used as a single measure (paragraph (c)(3)) and those circumstances in which ELP assessment data can be one measure along with other appropriate measures (paragraph (c)(4)). We have included evaluations of principal and teacher effectiveness in paragraph (c)(4). We have also revised the assessment design selection criterion in paragraph (b)(6)(i) to indicate that data from the assessments developed under the EAG program should be used only as appropriate as one of multiple measures for determinations of individual principal and teacher effectiveness.

*Comment:* Many commenters raised questions about the references in the ELP Priority to a "common definition of 'English learner'." One commenter expressed support for the general approach of requiring a common definition, noting that a common definition would ensure that the data States provide on the total number of English learners being served would be more accurate and consistent across the nation, thereby allowing parents, educators, and other stakeholders to make comparisons across States and the nation. Multiple commenters requested that the Department clarify the meaning of the term "common" and had diverging views on whether "common" should be defined as "identical" or "similar" (*e.g.,* comparable and consistent). Commenters also asked for clarification as to whether the reference to a "common definition" applies to home language surveys, screening instruments, procedures for identifying and classifying English learners, definitions of language proficiency levels, and criteria for determining the English proficiency of students and student exit from English learner status.

Several commenters provided specific suggestions for how the term "common" should be interpreted when used in the phrase "common definition of English learner." One commenter recommended that the common definition of English learner, including classification and exit criteria, be based solely on the ELP assessment system and not on academic performance. The commenter noted that excluding academic performance measures would avoid problems of construct validity and avoid confusing the "English learner" classification with non-language-related criteria. Another commenter recommended that an assessment of students' proficiency in their first language be considered in the common definition of English learner. Another commenter asked how subgroups of English learners would fit within a common definition and how data on these subgroups would be collected, disaggregated, reported, and used.

One commenter stated that requiring multiple States to change their definition of English learner to a common definition would be an unreasonable Federal administrative requirement that goes beyond the intent of the ESEA. This commenter recommended removing paragraph (a)(2) from the ELP Priority, which calls for States to adopt a common definition of English learner.

*Discussion:* The term "common," as used in a "common definition of English learner" in paragraph (a)(2) of the ELP Priority, means an identical definition of English learner with respect to certain criteria, specifically: The diagnostic assessments and associated achievement standards used to classify students as English learners, as well as the summative assessments and associated achievement standards used to exit students from English learner status. This definition is the same for all subgroups of English learners, with the exception of English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2). Assessment of students' proficiency in their first language is beyond the scope of the ELP Priority.

The use of a common definition of "English learner" and common criteria for exiting a student from English learner status will help ensure consistency in identifying English learners across the States in a consortium. However, the term "common" for purposes of the ELP Priority does not apply to other areas such as home language surveys, program placement and instruction for students, and the duration of program and support services for students. To clarify the scope of the ELP Priority, we have added language to paragraph (a)(2) to indicate that "common" means identical for purposes of the diagnostic assessments and associated achievement standards used to classify students as English learners as well as the summative assessments and associated achievement standards used to exit students from English learner status. To provide further clarity, we also substituted the word "common" for the word "uniform" in the definition of *English learner.*

We agree with the commenter that a common definition of English learner should be based on the ELP assessments to be developed under the priority, as reflected in paragraph (c)(3) of the ELP Priority. We also agree that the priority should specifically reference subgroups of English learners and, therefore, are adding language to paragraph (c)(1) of the ELP Priority to require that the ELP assessment system provide data that can be disaggregated by key English learner subgroups.

Because participation in a grant under the EAG program is voluntary and no

entity is required to participate and adopt a common definition of English learner, we do not believe the requirement in the ELP Priority regarding a common definition of English learner represents an unreasonable Federal administrative requirement and therefore decline to remove this provision from the priority.

*Changes:* We have revised paragraph (a)(2) of the ELP Priority to indicate that "common" means identical for purposes of the diagnostic and summative assessments and the associated achievement standards used to classify students as English learners and exit students from English learner status. We also substituted the word "common" for the word "uniform" in the definition of *English learner.* We have revised paragraph (c)(1) of the ELP Priority to require that the ELP assessment system provide data that can be disaggregated by key English learner subgroups and to provide examples of those subgroups.

*Comment:* Several commenters expressed concern that the proposed ELP Priority did not adequately address the development of ELP standards with which assessments developed under the priority must be aligned. The commenters recommended that the Department revise the priority to provide that the ELP standards be of high quality. One commenter also stated that the language of the proposed ELP Priority was unclear regarding whether EAG applicants would be required to develop the ELP standards to which assessments under the priority must be aligned as an activity under a grant. A few commenters specifically recommended that we require grantees to submit a detailed plan for developing and implementing the ELP standards on which they would base their ELP assessments. Another commenter recommended including in the ELP Priority a provision requiring the development of ELP standards or a requirement that all members of a consortium agree to the adoption and implementation of common ELP standards as a requirement for joining a consortium. These commenters stated that it would be impossible for a consortium to successfully develop common ELP assessments if each State in the consortium had its own ELP standards.

One commenter noted that linguistic components of language embedded within ELP standards may be necessary, but are not sufficient, to measure the extent to which English learners can process and use language for specified purposes or situations. This commenter stated that it is the discourse level of language that carries the "semantic load" supportive of communication that is needed for college- and career-readiness.

Another commenter stated that the ELP assessments developed under the ELP Priority should be aligned with ELP standards that correspond to content standards not only in English language arts but also in other subject areas.

Another commenter noted the importance of effectively implementing ELP standards, stating that, in an aligned assessment system, standards are the reference point for designing proficiency measures, interpreting and communicating assessment results, and using assessment results to improve teaching and learning.

*Discussion:* We agree that high-quality ELP standards and their implementation are a crucial foundation for the ELP assessment systems to be developed under the ELP Priority. Section 6112 of the ESEA, which authorizes the EAG program, does not authorize EAG funds to be used for developing standards. Therefore, the Department can make awards under the EAG program only to develop assessments. We are adding a program requirement clarifying this limitation.

We expect that the assessments developed under the ELP Priority will be aligned with high-quality ELP standards, and are revising the ELP Priority to more specifically define the characteristics of high-quality ELP standards to which the ELP assessments should align.

Grants under the RTTA program, which the ELP Priority is designed to complement, are focused on assessments that are aligned with college- and career-ready standards in English language arts and mathematics that are held in common by a multiple States. Hence, we are providing that the assessments developed under the ELP Priority must be aligned with ELP standards that correspond to common, college- and career-ready standards in English language arts and mathematics. The ELP Priority does not preclude an applicant from proposing to align the ELP assessments with ELP standards that include the academic language necessary for college- and career-readiness in subjects in addition to English language arts and mathematics. We also expect that rigorous ELP standards that correspond to a set of college- and career-ready standards in English language arts and mathematics that are held in common by multiple States and that are developed with broad stakeholder involvement will attend not only to the linguistic components of language but also to the discourse level of language.

*Changes:* We have revised paragraph (a)(5) of the ELP Priority to more specifically define the characteristics of the ELP standards to which the ELP assessments developed under the program must align. Specifically, we have indicated that those standards must correspond to a common set of college- and career-ready standards in English language arts and mathematics, and be rigorous, developed with broad stakeholder involvement, and vetted with experts and practitioners. The standards also must be standards for which external evaluations have documented rigor and correspondence to a common set of college- and career-ready standards in English language arts and mathematics.

We removed the reference to States adopting or utilizing any standards developed under a proposed project from paragraph (d) of the Collaborative Efforts Priority in order to clarify that EAG program funds may not be used to develop standards. We also have added a new requirement (e), which requires grantees to ensure that EAG funds are not used to support the development of standards, such as under the ELP Priority or any other priority. The subsequent requirements have been re-numbered accordingly.

*Comment:* Two commenters expressed support for our approach to ELP assessments for students with the most significant cognitive disabilities. One commenter suggested removing paragraph (e) of the ELP Priority, which requires applicants to include in their applications the strategies the applicant State or, if the applicant is part of a consortium, all States in the consortium, would use to assess the English proficiency of English learners with the most significant cognitive disabilities. The commenter suggested replacing this provision with a requirement that grantees under the EAG program coordinate with existing grantees funded under the Individuals with Disabilities Education Act (IDEA), including the General Supervision Enhancement Grant (GSEG) program, to address the needs of English learners with the most significant cognitive disabilities. One commenter suggested that we require applicants to indicate how they would coordinate work under an EAG grant awarded under the ELP Priority with grants awarded under the GSEG program.

*Discussion:* Recent awards under the GSEG program are supporting the development of alternate assessments based on alternate achievement standards that measure student knowledge and skills against academic content standards in English language

arts and mathematics held in common by multiple States; these grants are not supporting the development of alternate ELP assessments for students with the most significant cognitive disabilities. We acknowledge the importance of developing alternate ELP assessments for English learners with the most significant cognitive disabilities but, due to limited resources, are not including them in the ELP Priority.

There will be limited overlap in the focus of the projects awarded under the ELP Priority and the projects awarded under the GSEG program because the EAG grants will not be supporting the development of alternate assessments and because the GSEG awards, which focus only on alternate assessments, are not supporting the development of ELP assessments. Accordingly, we decline to require that EAG grantees coordinate with GSEG grantees.

To clarify the reference to English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards, we added the relevant regulatory citation to paragraphs (a)(10) and (a)(11) of the ELP Priority.

*Changes:* We have added the relevant regulatory citation, 34 CFR 200.6(a)(2), to paragraphs (a)(10) and (a)(11) of the ELP Priority.

*Comment:* One commenter recommended that we consider adding a priority to support the development of assessments to measure proficiency in a second language other than English for States that support bilingual education and bi-literacy.

*Discussion:* We recognize that measuring student proficiency in a second language other than English can provide useful data to educators of such students. States already have the flexibility to develop such assessments, which under certain circumstances may be supported by ESEA funds in accordance with section 6111 of the ESEA.

We decline to make the suggested change because we believe that developing new ELP assessments is a more pressing need than developing assessments that measure student proficiency in a second language other than English. The Department has provided funding under the RTTA program to consortia that together include 44 States and the District of Columbia to develop new assessment systems that measure student knowledge and skills against a common set of college- and career-ready standards in English language arts and mathematics. ELP assessments corresponding to such common standards will be needed when the RTTA assessments are implemented, and such assessments have not been developed.

*Changes:* None.

*Comment:* One commenter noted that addressing issues such as the assessment of students whose education has been interrupted might be more appropriately addressed by the GSEG program.

*Discussion:* The ELP Priority requires that ELP assessment systems developed under the priority accurately assess English learners with limited or no formal education, including students whose education has been interrupted. Data on the English proficiency of these students can support efforts to improve their instruction. The GSEG program focuses on assessment for students with disabilities, who may or may not be English learners. We decline to make a change in response to this comment, because it is beyond the scope of the program to make changes to other programs, such as the GSEG program, and because the GSEG program focuses on assessments for students with disabilities, only some of whom are English learners and not necessarily English learners with interrupted education.

*Changes:* None.

**Priority 2—Collaborative Efforts Among States**

*Comment:* We received a variety of comments on the paragraph in the Collaborative Efforts Priority that requires a consortium to include a minimum of 15 States. One commenter stated that providing grants to sizeable consortia of States would maximize the impact of program funds. Another commenter suggested that the Department establish an eligibility restriction under which only consortia would be eligible to apply and require that a consortium include a minimum of 15 States that represent at least 30% of the nation's English learners. Another commenter expressed concern that the approach to consortia may result in grants that do not include all States, including some States with sizable English learner populations. Two additional commenters recommended removing the proposed minimum number of States in a consortium, suggesting that a minimum of 15 States would impose an unfair obstacle to States and that improvement in assessment quality will be achieved through competition in the marketplace.

*Discussion:* States have indicated to the Department their interest in working together in consortia to develop assessments aligned with common standards. Because of the complexity of developing and implementing assessments and assessment-related instruments, collaborative efforts between and among States can yield approaches that build on each State's expertise and experience, as well as approaches that generate substantial efficiencies in development, administration, costs, and uses of results. We believe that larger consortia will make more effective use of EAG funds by drawing on the expertise and experience of more States, increasing the potential impact across States, and increasing the degree to which common assessment tools are available to States nationwide. However, we do not want to limit States' flexibility in forming consortia by adding requirements in the Collaborative Efforts Priority, such as a requirement that a certain percentage of English learners be represented by the population of consortium member States. We do not have the authority to require all States to participate, and we decline to prohibit individual States from applying for an award under the EAG program; as a result, we decline to make the suggested changes in these areas.

*Changes:* None.

*Comment:* While expressing general support for the Collaborative Efforts Priority, one commenter expressed concern regarding the requirement to have States sign a binding memorandum of understanding to use assessments not yet developed. The commenter suggested that requiring a strong and exclusive letter of support for one consortium proposal would be a more reasonable requirement.

*Discussion:* Under Department regulations, all members of a consortium applying for a grant must enter into an agreement that (1) details the activities that each member of the consortium plans to perform; and (2) binds each member of the consortium to every statement and assurance made by the applicant in its application. (34 CFR 75.128). In response to the commenters' concerns that States may decide to leave a consortium after receiving the grant, we are revising paragraph (c)(3) of the Collaborative Efforts Priority to require applicants to include in their applications protocols for member States to leave a consortium and for new member States to join a consortium. A consortium of States applying for a grant would have flexibility in determining the roles that member States may play. In addition, a State could enter or leave a consortium according to the protocols the consortium has established for this purpose. In light of the Department's

regulations and the changes being made to provide flexibility to States, we decline to require a strong and exclusive letter of support rather than a binding memorandum of understanding.

*Changes:* We have revised paragraph (c)(3) of the Collaborative Efforts Priority to require that applications from consortia include protocols to allow States to leave the consortium and for new member States to join the consortium. We also revised paragraph (d) of the Collaborative Efforts Priority to indicate that, to remain in the consortium, a State must adopt or use any instrument, including to the extent applicable, assessments, developed under the proposed project no later than the end of the project period.

**Selection Criteria**

*Comment:* One commenter, expressing support for the selection criteria, observed that the criteria include all the essential principles needed to govern the development and implementation of high-quality, rigorous, research-based assessment practices.

*Discussion:* We agree that the selection criteria should address the key aspects of developing high-quality assessments and that the selection criteria, as designed, address those key aspects.

*Changes:* None.

*Comment:* One commenter suggested revising paragraph (5) of the assessment design selection criterion, which specifies the types of data that must be provided by the assessments. The commenter suggested adding the following categories of data: types of English learner program services, length of time in the English learner program, and level of English proficiency.

*Discussion:* Students' levels of English proficiency are already included among the data the ELP assessments developed under the ELP Priority must provide. However, because the selection criteria in this notice may be used in future competitions, which may or may not include the ELP Priority, we decline to revise the selection criteria in a manner that relates specifically to the ELP Priority. For this same reason, we decline to include in the selection criteria the other types of data the commenter suggested (*i.e.,* English learner program services, length of time in the English learner program). In addition, data regarding services provided by English learner programs and the length of time students are in such programs are data that help assess program effectiveness; they are not data that ELP assessments provide.

*Changes:* None.

*Comment:* One commenter suggested that we revise paragraph (b)(10) of the assessment design selection criterion, which addresses methods of scoring, to allow for self-scoring of student performance on assessments in order to shorten the turnaround time for scoring.

*Discussion:* The selection criteria do not specify the scoring methods that grantees must use. Applicants may propose to use a self-scoring approach, as the commenter suggests, so long as the approach is consistent with the technical quality requirements for the assessments.

*Changes:* None.

*Comment:* One commenter recommended that paragraph (11) of the assessment design selection criterion, which addresses reports to be produced based on the assessments, be revised to include the provision of reports in a language and format that parents can understand.

*Discussion:* We agree with the commenter that reports of assessment data should be provided to parents in an understandable and uniform format and, to the extent practicable, in a language that parents can understand, and have revised this paragraph accordingly.

*Changes:* We have revised paragraph (11) of the assessment design selection criterion to provide for the consideration of the extent to which, reports produced based on the assessments will be presented in an understandable and uniform format, and to the extent practicable, in a language that parents can understand.

*Comment:* One commenter noted that paragraph (1)(ii) of the proposed assessment development plan selection criterion, which described the types of personnel to be involved in each assessment development phase and provided some examples of such personnel, did not include references to advocates for English learners or parents of English learners. The commenter suggested that the Department revise this paragraph to include such stakeholders in the examples provided.

*Discussion:* We agree that the list of examples should include a reference to other key stakeholders and have revised the selection criterion accordingly. However, because the selection criteria may be used in future competitions, which may or may not include the ELP Priority, we decline to revise the selection criteria in a manner that relates specifically to the ELP Priority, such as listing stakeholder groups specific to English learners.

*Changes:* We have revised paragraph (1)(ii) of the assessment development plan selection criterion to include "other key stakeholders" in the list of examples provided.

*Comment:* One commenter expressed support for the Department's reference to the use of representative sampling for field testing in paragraph (5) of the assessment development plan selection criterion. This commenter suggested that we revise this paragraph to specify certain subgroups of English learners that may be considered in a representative sample.

*Discussion:* We agree with the suggestion that the student populations that should be considered for representative sampling include high- and low-performing students, different types of English learners, and students with disabilities, and that it would be helpful for applicants to have examples of subgroups of English learners that may be considered. We have revised this paragraph to provide examples of the subgroups of English learners that may be considered in a representative sample.

*Changes:* We have revised paragraph (5) of the assessment development plan selection criterion to include the following examples of subgroups of English learners that may be considered in a representative sample: recently arrived English learners, former English learners, migratory English learners, and English learners with disabilities.

*Comment:* One commenter expressed support for the emphasis on research and evaluation in the selection criteria.

*Discussion:* The Department agrees that the selection criteria should include a research and evaluation component and believes that the selection criteria, as designed, adequately consider whether an applicant's research and evaluation plan will ensure that the assessments developed are valid, reliable, and fair for their intended purposes.

*Changes:* None.

*Comment:* One commenter, while expressing support for the emphasis on professional capacity and outreach in the selection criteria, stated that mainstream and content-area teachers, as well as English-as-a-second language and bilingual program educators and administrators, should be included in professional capacity and outreach plans. The commenter also suggested that such plans should address additional factors relating to ELP assessments, including the definition of English learners, language proficiency levels, exit criteria for programs and services, and professional development on the use of the assessments and assessment results to inform and improve instruction.

*Discussion:* The activities suggested by the commenter are allowable under the requirements for this program. However, because the selection criteria may be used in future competitions that may or may not involve the ELP Priority, we decline to make the recommended changes to the selection criterion.

*Changes:* None.

**Requirements**

*Comment:* One commenter recommended that the requirement related to evaluation be revised to mandate that evidence from evaluation activities be posted on a specific Web site used by professionals who specialize in issues related to English learners in order to improve dissemination of findings.

*Discussion:* The EAG requirements do not preclude grantees from posting information related to grant activities on Web sites (provided that the appropriate disclaimers are included). However, we believe that specifying the manner in which grantees make information available would be unnecessarily prescriptive. Therefore, we decline to make the suggested change in order to provide grantees with flexibility in how they meet the requirement to make information related to grant activities available to the public.

*Changes:* None.

*Comment:* A couple of commenters expressed concern regarding the requirement that grantees develop a strategy to make student-level data that result from any assessments or other assessment-related instruments developed under the ELP Priority available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies. One commenter recommended that the requirements affirmatively address the applicable privacy safeguards under the ESEA and the Family Educational Rights and Privacy Act (FERPA) to ensure that disaggregated data used to report achievement results for subgroups cannot be traced back to an identifiable student. Another commenter suggested removing the requirement due to concerns about privacy issues and a concern that limited funds for the grants might be diverted to research or other entities that have separate access to governmental and non-governmental funding sources. The commenter also stated that the proposed requirements included all necessary considerations for validity, reliability, and fairness, thereby making the need for further research duplicative and superfluous.

*Discussion:* Eligible applicants awarded a grant under the EAG program must comply with FERPA and 34 CFR Part 99, as well as State and local requirements regarding privacy; we are adding a footnote to the notice reminding applicants that they must comply with these requirements. With regard to the concern that limited funds for the grants might be diverted to research, we note that the requirement states that grant recipients must make data available for further research, and that grant recipients may only use grant funds on research and evaluation activities that fall within the scope of the activities proposed in their approved applications. In order to allow for additional research that may prove useful, we decline to remove the requirement.

*Changes:* We have added a footnote to requirement (c) (making student-level data available for further research) reminding applicants that they must comply with FERPA and State and local privacy requirements should they receive an award under this program.

*Comment:* Two commenters expressed concern regarding the requirement that grantees, unless otherwise protected by law or agreement as proprietary information, make any assessment content and other assessment-related instruments developed with EAG funds freely available to States, technology platform providers, and others that request it for purposes of administering assessments, provided that those parties receiving assessment content comply with consortium or State requirements for test or item security. One commenter reiterated that all instruments developed with EAG funding must be open-source and available to any State requesting the use of the tools and instruments. The other commenter requested that we clarify that assessments would be freely available to States and others, including local educational agencies. This commenter recommended removing the phrase "unless otherwise protected by law or agreement as proprietary information" from the requirement, and adding a reference to making the information available to local educational agencies.

*Discussion:* We cannot make a change to protections of proprietary information guaranteed by existing laws. In addition, for work funded by the EAG program and other Department-funded discretionary grant programs, the Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes: The copyright in any work developed under a grant from the EAG program; and any rights of copyright to which a grantee or a contractor purchases ownership with grant support. (34 CFR 80.34). At this time we do not intend to exercise this license with respect to any products produced with EAG funds. If a grantee develops a product but fails to make it reasonably available to interested entities, however, we may exercise our license if doing so would further the interests of the Federal Government. We believe the requirement as originally stated, coupled with our license with respect to any products produced with EAG funds, will serve to make adequately available products produced with EAG funds. Additionally, we note that this requirement is consistent with requirements of the RTTA program (see program requirement 6 "Making Work Available," in the RTTA program notice inviting applications, 75 FR 18175 (April 9, 2010)). As a result, we decline to make the suggested changes.

*Changes:* None.

**Definitions**

*Comment:* With regard to the definition of a *common set of college- and career-ready standards,* one commenter suggested revising the definition to specify what constitutes a "significant number of States."

*Discussion:* In using the term significant, we intended to indicate multiple States rather than to refer to a specific number of States. We agree that the ELP Priority should be more specific and have replaced the phrase "significant number of" with the term "multiple."

*Changes:* In the definition of *common set of college- and career-ready standards,* we have replaced the phrase "significant number of" with the term "multiple."

**Funding**

*Comment:* Some commenters expressed concern about the amount of funds anticipated to be available for awards under a competition for EAG funds involving the ELP Priority. Two commenters stated that the information they had from interviews and press reports suggested that funding for the development of ELP assessment systems under the ELP Priority would be limited, especially when compared to funds available for recent Department grants awarded under the RTTA and GSEG programs. Another commenter expressed concern that the amount of funding that would be available for an EAG competition involving the ELP Priority would be too small, especially in comparison with the RTTA and

GSEG programs that the new priorities for the EAG program are designed to complement. Some commenters recommended that the Department consider making additional funds available to support the development of ELP assessment systems under the EAG program. Another commenter noted that, based on its experience in developing assessments, the cost of accomplishing the scope and scale of work proposed in the notice of proposed priorities, requirements, definitions, and selection criteria would require more than the $10.7 million appropriated for the EAG in FY 2010 to be awarded in 2011. The commenter encouraged the Department to provide funding for grants under the EAG program comparable to the amounts awarded under the RTTA and GSEG programs. Another commenter stated that $10.7 million would be inadequate to address the needs of English learners through the EAG program. Another commenter recommended that the Department provide awards of $30 million, and suggested decreasing the estimated number of awards if necessary to fund grantees at this amount. None of the commenters outlined specific anticipated costs for the various components of developing an ELP assessment system, and only one commenter suggested a specific amount for awards.

*Discussion:* We cannot alter the amount of funding that Congress appropriated for the EAG program in the FY 2010 budget. In developing our estimates for the average size and range of awards included in the FY 2011 notice inviting applications for new awards for FY 2010 funds, published elsewhere in this issue of the **Federal Register**, we considered the costs of efforts to develop ELP assessment systems that the Department has previously funded, the cost estimates for activities under programs with similar goals, and other information available for estimating the costs of developing assessment systems.

*Changes:* None.

*Final Priorities:*

*English Language Proficiency Assessment System.* The Department establishes a priority under the EAG program for an English language proficiency assessment system. To meet this priority, an applicant must propose a comprehensive plan to develop an English language proficiency assessment system that is valid, reliable, and fair for its intended purpose. Such a plan must include the following features:

(a) *Design.* The assessment system must—

(1) Be designed for implementation in multiple States;

(2) Be based on a common definition of *English learner* adopted by the applicant State and, if the applicant applies as part of a consortium, adopted and held in common by all States in the consortium, where common with respect to the definition of "English learner" means identical for purposes of the diagnostic (*e.g.,* screener or placement) assessments and associated achievement standards used to classify students as English learners as well as the summative assessments and associated achievement standards used to exit students from English learner status;

(3) At a minimum, include diagnostic (*e.g.,* screener or placement) and summative assessments;

(4) Measure students' English proficiency against a set of English language proficiency standards held by the applicant State and, if the applicant applies as part of a consortium, held in common by all States in the consortium;

(5) Measure students' English proficiency against a set of English language proficiency standards that correspond to a common set of college- and career-ready standards (as defined in this notice) in English language arts and mathematics, are rigorous, are developed with broad stakeholder involvement, are vetted with experts and practitioners, and for which external evaluations have documented rigor and correspondence with a common set of college- and career-ready standards in English language arts and mathematics;

(6) Cover the full range of the English language proficiency standards across the four language domains of reading, writing, speaking, and listening, as required by section 3113(b)(2) of the ESEA;

(7) Ensure that the measures of students' English proficiency consider the students' control over the linguistic components of language (*e.g.,* phonology, syntax, morphology);

(8) Produce results that indicate whether individual students have attained the English proficiency necessary to participate fully in academic instruction in English and meet or exceed college- and career-ready standards;

(9) Provide at least an annual measure of English proficiency and student progress in learning English for English learners in kindergarten through grade 12 in each of the four language domains of reading, writing, speaking, and listening;

(10) Assess all English learners, including English learners who are also students with disabilities and students with limited or no formal education, except for English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2); and

(11) Be accessible to all English learners, including by providing appropriate accommodations for English learners with disabilities, except for English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2).

(b) *Technical quality.* The assessment system must measure students' English proficiency in ways that—

(1) Are consistent with nationally recognized professional and technical standards; and

(2) As appropriate, elicit complex student demonstrations of comprehension and production of academic English (*e.g.,* performance tasks, selected responses, brief or extended constructed responses).

(c) *Data.* The assessment system must produce data that—

(1) Include student attainment of English proficiency and student progress in learning English (including data disaggregated by English learner subgroups such as English learners by years in a language instruction educational program; English learners whose formal education has been interrupted; students who were formerly English learners by years out of the language instruction educational program; English learners by level of English proficiency, such as those who initially scored proficient on the English language proficiency assessment; English learners by disability status; and English learners by native language);

(2) Provide a valid and reliable measure of students' abilities in each of the four language domains (reading, writing, speaking, and listening) and a comprehensive English proficiency score based on all four domains, with each language domain score making a significant contribution to the comprehensive ELP score, at each proficiency level; and

(3) Can be used for the—

(i) Identification of students as English learners;

(ii) Decisions about whether a student should exit from English language instruction educational programs;

(iii) Determinations of school, local educational agency, and State effectiveness for the purposes of

accountability under Title I and Title III of the ESEA;

(4) Can be used, as appropriate, as one of multiple measures, to inform—

(i) Evaluations of individual principals and teachers in order to determine their effectiveness;

(ii) Determinations of principal and teacher professional development and support needs; and

(iii) Strategies to improve teaching, learning, and language instruction education programs.

(d) *Compatibility.* The assessment system must use compatible approaches to technology, assessment administration, scoring, reporting, and other factors that facilitate the coherent inclusion of the assessments within States' student assessment systems.

(e) *Students with the most significant cognitive disabilities.* The comprehensive plan to develop an English language proficiency assessment system must include the strategies the applicant State and, if the applicant is part of a consortium, all States in the consortium, plans to use to assess the English proficiency of English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2) in lieu of including those students in the operational administration of the assessments developed for other English learners under a grant from this competition.

*Collaborative Efforts Among States.* The Department establishes a priority under the EAG program for collaborative efforts among States. To meet this priority, an applicant must—

(a) Include a minimum of 15 States in the consortium;

(b) Identify in its application a proposed project management partner and provide an assurance that the proposed project management partner is not partnered with any other eligible applicant applying for an award under this competition; [1]

(c) Provide a description of the consortium's structure and operation. The description must include—

(1) The organizational structure of the consortium (*e.g.,* differentiated roles that a member State may hold);

(2) The consortium's method and process (*e.g.,* consensus, majority) for making different types of decisions (*e.g.,* policy, operational);

(3) The protocols by which the consortium will operate, including protocols for member States to change roles in the consortium, for member States to leave the consortium, and for new member States to join the consortium;

(4) The consortium's plan, including the process and timeline, for setting key policies and definitions for implementing the proposed project, including, for any assessments developed through a project funded by this grant, the common set of standards upon which to base the assessments, a common set of performance-level descriptors, a common set of achievement standards, common assessment administration procedures, common item-release and test-security policies, and a common set of policies and procedures for accommodations and student participation; and

(5) The consortium's plan for managing grant funds received under this competition; and

(d) Provide a memorandum of understanding or other binding agreement executed by each State in the consortium that includes an assurance that, to remain in the consortium, the State will adopt or use any instrument, including to the extent applicable, assessments, developed under the proposed project no later than the end of the project period.

*Types of Priorities:*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

*Final Requirements:*

The Department establishes the following requirements for the Enhanced Assessment Grants program. We may apply one or more of these requirements in any year in which a competition for program funds is held. An eligible applicant awarded a grant under this program must:

(a) Evaluate the validity, reliability, and fairness of any assessments or other assessment-related instruments developed under a grant from this competition, and make available documentation of evaluations of technical quality through formal mechanisms (*e.g.,* peer-reviewed journals) and informal mechanisms (*e.g.,* newsletters), both in print and electronically;

(b) Actively participate in any applicable technical assistance activities conducted or facilitated by the Department or its designees, coordinate with the RTTA program in the development of assessments under this program, and participate in other activities as determined by the Department;

(c) Develop a strategy to make student-level data that result from any assessments or other assessment-related instruments developed under a grant from this competition available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies; [2]

(d) Ensure that any assessments or other assessment-related instruments developed under a grant from this competition will be operational (ready for large-scale administration) at the end of the project period;

(e) Ensure that funds awarded under the EAG program are not used to support the development of standards, such as under the English language proficiency assessment system priority or any other priority.

(f) Maximize the interoperability of any assessments and other assessment-related instruments developed with funds from this competition across technology platforms and the ability for States to move their assessments from one technology platform to another by doing the following, as applicable, for any assessments developed with funds from this competition by—

(1) Developing all assessment items in accordance with an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period, without non-standard extensions or additions; and

(2) Producing all student-level data in a manner consistent with an industry-recognized open-licensed interoperability standard that is

[1] In selecting a proposed project management partner, an eligible applicant must comply with the requirements for procurement in 34 CFR 80.36.

[2] Eligible applicants awarded a grant under this program must comply with the Family Educational Rights and Privacy Act (FERPA) and 34 CFR Part 99, as well as State and local requirements regarding privacy.

approved by the Department during the grant period;

(g) Unless otherwise protected by law or agreement as proprietary information, make any assessment content (i.e., assessments and assessment items) and other assessment-related instruments developed with funds from this competition freely available to States, technology platform providers, and others that request it for purposes of administering assessments, provided that those parties receiving assessment content comply with consortium or State requirements for test or item security; and

(h) For any assessments and other assessment-related instruments developed with funds from this competition, use technology to the maximum extent appropriate to develop, administer, and score the assessments and report results.

*Final Definitions:*

The Department establishes the following definitions for the Enhanced Assessment Grants program. We may apply one or more of these definitions in any year in which a competition for program funds is held.

*Common set of college- and career-ready standards* means a set of academic content standards for grades K–12 held in common by multiple States, that (a) define what a student must know and be able to do at each grade level; (b) if mastered, would ensure that the student is college- and career-ready by the time of high school graduation; and (c) for any consortium of States applying under the EAG program, are substantially identical across all States in the consortium.

A State in a consortium may supplement the common set of college- and career-ready standards with additional content standards, provided that the additional standards do not comprise more than 15 percent of the State's total standards for that content area.

*English language proficiency assessment system,* for purposes of the English language proficiency assessment system priority, means a system of assessments that includes, at a minimum, diagnostic (*e.g.,* screener or placement) and summative assessments at each grade level from kindergarten through grade 12 that cover the four language domains of reading, writing, speaking, and listening, as required by section 3113(b)(2) of the ESEA, and that meets all other requirements of the priority.

*English learner* means a student who is an English learner as defined by the applicant consistent with the definition of a student who is "limited English proficient" as that term is defined in section 9101(25) of the ESEA. If the applicant submits an application on behalf of a consortium, member States must develop and adopt a common definition of the term during the period of the grant.

*Student with a disability* means a student who has been identified as a child with a disability under the Individuals with Disabilities Education Act, as amended.

*Final Selection Criteria:*

The Department establishes the following selection criteria for the Enhanced Assessment Grant program. We may apply one or more of these selection criteria in any year in which a competition for program funds is held.

(a) *Theory of action.* The Secretary reviews each application to determine the extent to which the eligible applicant's theory of action is logical, coherent, and credible, and will result in improved student outcomes. In determining the extent to which the theory of action has these attributes, we will consider the description of, and rationale for—

(1) How the assessment results will be used (*e.g.,* at the State, local educational agency, school, classroom, and student levels);

(2) How the assessments and assessment results will be incorporated into coherent educational systems (*i.e.,* systems that include standards, assessments, curriculum, instruction, and professional development) of the State(s) participating in the grant; and

(3) How those educational systems as a whole will improve student achievement.

(b) *Assessment design.* The Secretary reviews each application to determine the extent to which the design of the eligible applicant's proposed assessments is innovative, feasible, and consistent with the theory of action. In determining the extent to which the design has these attributes, we will consider—

(1) The number and types of assessments, as appropriate (*e.g.,* diagnostic assessments, summative assessments);

(2) How the assessments will measure student knowledge and skills against the full range of the relevant standards, including the standards against which student achievement has traditionally been difficult to measure, provide an accurate measure of student proficiency on those standards, including for students who are high- and low-performing in academic areas, and provide an accurate measure of student progress in the relevant area over a full academic year;

(3) How the assessments will produce the required student performance data, as described in the priority;

(4) How and when during the academic year different types of student data will be available to inform and guide instruction, interventions, and professional development;

(5) The types of data that will be produced by the assessments, which must include student achievement data and other data specified in the relevant priority;

(6) The uses of the data that will be produced by the assessments, including (but not limited to)—

(i) Determining individual student achievement and student progress; determining, as appropriate and as one of multiple measures, individual principal and teacher effectiveness, if applicable; and professional development and support needs;

(ii) Informing teaching, learning, and program improvement; and

(7) The frequency and timing of administration of the assessments, and the rationale for these;

(8) The number and types of items (*e.g.,* performance tasks, selected responses, observational rating, brief or extended constructed responses) and the distribution of item types within the assessments, including the extent to which the items will be varied and elicit complex student demonstrations or applications of knowledge, skills, and approaches to learning, as appropriate (descriptions should include a concrete example of each item type proposed); and the rationale for using these item types and their distributions;

(9) The assessments' administration mode (*e.g.,* paper-and-pencil, teacher rating, computer-based, or other electronic device), and the rationale for the mode;

(10) The methods for scoring student performance on the assessments, the estimated turnaround times for scoring, and the rationale for these; and

(11) The reports that will be produced based on the assessments, and for each report: The key data it will present; its intended use; target audience (*e.g.,* students, parents, teachers, administrators, policymakers); and its presentation in an understandable and uniform format and, to the extent practicable, in a language that parents can understand.

(c) *Assessment development plan.* The Secretary reviews each application to determine the extent to which the eligible applicant's plan for developing the proposed assessments will ensure that the assessments are ready by the end of the grant period for wide-scale administration in a manner that is

timely, cost-effective, and consistent with the proposed design and incorporates a process for ongoing feedback and improvement. In determining the extent to which the assessment development plan has these attributes, we will consider—

(1)(i) The approaches for developing assessment items (*e.g.,* evidence-centered design, universal design) and the rationale for using those approaches; and the development phases and processes to be implemented consistent with the approaches; and

(ii) The types of personnel (*e.g.,* practitioners, content experts, assessment experts, experts in assessing English learners, linguists, experts in second language acquisition, experts in assessing students with disabilities, psychometricians, cognitive scientists, institution of higher education representatives, experts on career readiness standards, and other key stakeholders) involved in each development phase and process;

(2) The approach and strategy for designing and developing accommodations, accommodation policies, and methods for standardizing the use of those accommodations for students with disabilities;

(3) The approach and strategy for ensuring scalable, accurate, and consistent scoring of items, including the approach and moderation system for any human-scored items and the extent to which teachers are trained and involved in the administration and scoring of assessments;

(4) The approach and strategy for developing the reporting system; and

(5) The overall approach to quality control and the strategy for field-testing assessment items, accommodations, scoring systems, and reporting systems, including, with respect to assessment items and accommodations, the use of representative sampling of all types of student populations, taking into particular account high- and low-performing students, different types of English learners (*e.g.,* recently arrived English learners, former English learners, migratory English learners, and English learners with disabilities), and students with disabilities.

(d) *Research and evaluation.* The Secretary reviews each application to determine the extent to which the eligible applicant's research and evaluation plan will ensure that the assessments developed are valid, reliable, and fair for their intended purposes. In determining the extent to which the research and evaluation plan has these attributes, we will consider—

(1) The plan for identifying and employing psychometric techniques suitable for verifying, as appropriate to each assessment, its construct, consequential, and predictive validity; external validity; reliability; fairness; precision across the full performance continuum; and comparability within and across grade levels; and

(2) The plan for determining whether the assessments are being implemented as designed and the theory of action is being realized, including whether the intended effects on individuals and institutions are being achieved.

(e) *Professional capacity and outreach.* The Secretary reviews each application to determine the extent to which the eligible applicant's plan for implementing the proposed assessments is feasible, cost-effective, and consistent with the theory of action. In determining the extent to which the implementation plan has these attributes, we will consider—

(1) The plan for supporting teachers and administrators in implementing the assessments and for developing, in an ongoing manner, their professional capacity to use the assessments and results to inform and improve instructional practice; and

(2) The strategy and plan for informing the public and key stakeholders (including teachers, administrators, families, legislators, and policymakers) in each State or in each member State within a consortium about the assessments and for building support from the public and those stakeholders.

(f) *Technology approach.* The Secretary reviews each application to determine the extent to which the eligible applicant would use technology effectively to improve the quality, accessibility, cost-effectiveness, and efficiency of the proposed assessments. In determining the extent to which the eligible applicant is using technology effectively, we will consider—

(1) The description of, and rationale for, the ways in which technology will be used in assessment design, development, administration, scoring, and reporting; the types of technology to be used (including whether the technology is existing and commercially available or is being newly developed); and how other States or organizations can re-use in a cost-effective manner any technology platforms and technology components developed under this grant; and

(2) How technology-related implementation or deployment barriers will be addressed (*e.g.,* issues relating to local access to internet-based assessments).

(g) *Project management.* The Secretary reviews each application to determine the extent to which the eligible applicant's project management plan will result in implementation of the proposed assessments on time, within budget, and in a manner that is financially sustainable over time. In determining the extent to which the project management plan has these attributes, we will consider—

(1) The project workplan and timeline, including, for each key deliverable (*e.g.,* necessary procurements and any needed approvals for human subjects research, assessment, scoring and moderation system, professional development activities), the major milestones, deadlines, and entities responsible for execution;

(2) The approach to identifying, managing, and mitigating risks associated with the project;

(3) The extent to which the eligible applicant's budget is adequate to support the development of assessments that meet the requirements of the priority and includes costs that are reasonable in relation to the objectives, design, and significance of the proposed project and the number of students to be served;

(4) For each applicant State or for each member State within a consortium, the estimated costs for the ongoing administration, maintenance, and enhancement of the operational assessments after the end of the project period for the grant and a plan for how the State will fund the assessments over time (including by allocating to the assessments funds for existing State or local assessments that will be replaced by the new assessments); and

(5) The quality and commitment of the personnel who will carry out the proposed project, including the qualifications, relevant training, and experience of the project director and other key project personnel, and the extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does not solicit applications. In any year in which we choose to use these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

*Executive Order 12866:* This notice has been reviewed in accordance with Executive Order 12866. Under the terms

of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priorities, requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We fully discussed the costs and benefits of this regulatory action in the notice of proposed priorities, requirements, definitions, and selection criteria. Elsewhere in this notice we discuss the potential costs and benefits, both quantitative and qualitative, of the final priorities, requirements, definitions, and selection criteria.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document 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**.

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Dated: April 14, 2011.

**Thelma Meléndez de Santa Ana,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2011–9479 Filed 4–18–11; 8:45 am]

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**H.R. 4/P.L. 112–9**

Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (Apr. 14, 2011; 125 Stat. 36)

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